DISTRICT COURT OF THE UNITED STATES OF AMERICA

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

IN EQUITY

DISTRICT COURT NUMBER 13985.

1. COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, a corporation,
2. SAM M. AUSTIN,
3. GEORGE H. DENNINGER,
4. ARTHUR BIEDERMAN,
5. ERWIN L. BIEL,
6. WILLIAM BIELKE,
7. LAWRENCE BIRKENSTOCK and OSCAR BIRKENSTOCK, a co-partnership doing business as and under the firm name and style of BIRKENSTOCK BROTHERS,
8. A. E. BIRKENSTOCK,
9. PAUL BLATZ,
10. LEO BLASCHKA
11. EDWARD BOETCHER,
12. A. H. Braker,
13. WILLIAM BREYER, ELMER BREYER and LAWRENCE BREYER, a co-partnership, doing business as and under the firm name and style of WILLIAM BREYER & SONS,
14. AUGUST BUCHHOLZ,
15. WILLIAM H. CALL,
16. B. A. CONLIN,
17. JAMES CROMBIE,
18. JOHN B. CROMBIE,
19. RAYMOND CROSSMAN and J. KIRK CORSSMAN, a co-partnership, doing business as and under the firm name and style of CROSSMAN BROTHERS,
20. HENRY B. DOLAN,
21. LOUIS DOBIS,
22. HENRY DUBORG,
23. MARY DUFFY,
24. EARL FIELDS,
25. CHARLES H. FINGER,
26. H. A. FREDERICK,
27. BUDD FREY,
28. HERMAN F. SCHMIDT,
29. HOWELL GRIFFITH,
30. BEN GROENING,
31. RAY W. HASKEY,
32. AUGUST HANNAMANN, JR.,
33. CARL HATZINGER,
34. LOUIS HATZINGER,
35. RAYMOND HEIDEMANN,
36. EDWARD HENKE,
37. FRED HENKE,
38. FRANK HENNING,
39. FRED HEPPE,
40. LEONARD HERZBERG,
41. EDWARD HERZBERG,
42. CHARLES H. HOLSTEN,
43. DONALD HOLT,
44. RUDOLF HOMANN,
45. H. H. HUGGETT,
46. WILLIAM HUNDLEY,
47. ARTHUR HURCKMAN,
48. CHARLES JAHNKE,
49. JOHN D. JONES,
50. OWEN T. JONES,
51. WILLIAM E. JONES,
52. WILLIAM O. JONES,
53. JOHN E. JOHNSON,
54. THERON JOHNSON,
55. JOHN KANT,
56. JOSEPH KENNEDY,
57. FRED KENNING,

(Continued on page 2 hereof)

58. M. A. KIESOW,
59. HAROLD KITZEROW,
60. ALBERT KRUEGER,
61. JOHN LANGEFELDT,
62. FRANK LEISMAN,
63. EMIL P. LEISTIKOW,
64. HERMAN A. LENZ,
65. EMERY LENZ,
66. JOHN LEWIS,
67. CLARENCE F. LIENKE,
68. OTTO F. LIENKE,
69. JOHN J. LOBECK,
70. FRANK LOBECK,
71. ERNEST LOEFFLER,
72. ADDIE LYNCH,
73. ALBERT MAIER,
74. THOMAS F. MANLEY,
75. ALBERT MARTIN,
76. LAWRENCE METZGER,
77. RAYMOND MEYERS,
78. BERNIE NICKELSON,
79. ROBERT W. MILLER,
80. ROBERT MILLER,
81. THOMAS MULLIGAN,
82. BRUCE NASHOLD,
83. JULIUS PETRICK,
84. EDWARD M. POSER AND EDWARD W. GAUMITZ, a co-partnership, doing business as and under the firm name and style of POSER & GAUMITZ,
85. EDWARD M. POSER AND JOSEPH GROH, a co-partnership, doing business as and under the firm name and style of POSER & GROH,
86. NICK POWERS,
87. GUST RAHN,
88. PAUL RAHN,
89. CLEM RAKE,
90. THOMAS H. ROBERTS,
91. A. J. ROEDL,
92. EARL RUETER,
93. CHARLES SAUER,
94. CHRIS. SAUER,
95. ALBERT SALZMAN,
96. WILLIAM SCHLEICHER,
97. AUGUST SCHLIFF, JR.,
98. PAUL SCHLIFF,
99. LENA SCHMELING,
100. ROBERT SCHMIDT,
101. R. E. SCHRAB,
102. EMIL F. SCHULTZ,
103. HERBERT SENNHENN,
104. H. W. STANGE,
105. OTTO SCHWOCK,
106. ARTHUR STARK,
107. ALLEN W. SUMNICHT,
108. F. A. SUMNICHT,
109. H. J. THIEDE,
110. FRANK WALASHEK,
111. J. C. WATERWORTH,
112. THOMAS WATERWORTH,
113. RALPH C. WEBSTER,
114. JOHN WEISENSEL,
115. ARTHUR H. WEINER,
116. RAYMOND WEINER,
117. HENRY C. WESTPHAL,
118. OTTO WHITEFOOT,
119. HAROLD WRIGHT,
120. EDWARD YERGES, and
121. WALTER ZIMBRICH,

Plaintiffs,

vs.

HENRY A. WALLACE, Secretary of Agriculture of the United States of America, REXFORD GUY TUGWELL, Under-Secretary of Agriculture of the United States of America, HOMER J. CUMMINGS, Attorney General of the United States of America, DWIGHT H. GREEN, United States Attorney for the Northern District of Illinois, Eastern Division, and FRANK C. BAKER, Market Administrator of the Chicago Sales Area under License for Milk - License No. 30 - Chicago Sales Area, as Amended,

Defendants.

FIRST AMENDED BILL OF COMPLAINT

To the Honorable, the Judges of the Said Court,

In Chancery Sitting:

Plaintiffs, citizens and residents of the United States of America, and of the state of Wisconsin, bring this, their First Amended Bill of Complaint against HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture, who resides in the city of Washington and District of Columbia and who is a citizen and resident of the said District of Columbia; REXFORD GUY TUGWELL, as duly appointed, qualified and acting Under-Secretary of Agriculture, who resides in the city of Washington and District of Columbia and who is a citizen and resident of the said District of Columbia; HOMER J. CUMMINGS, as duly appointed, qualified and acting Attorney General of the United States of America, who resides in the city of Washington and District of Columbia and who is a citizen and resident of the said District of Columbia; DWIGHT H. GREEN, as duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division, who resides in the city of Chicago, county of Cook and state of Illinois, and who is a citizen and resident of said state of Illinois; and FRANK C. BAKER, as Market Administrator of and for the Chicago Sales Area under License No. 30.- License for Milk - Chicago Sales Area, as Amended, who resides in the city of Chicago, county of Cook and state of Illinois, and who is a citizen and resident of said state if Illinois, and thereupon complain and allege as follows:

1. That plaintiff, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, in the title hereof numbered 1, (hereinafter in this Bill of Complaint styled and referred to as "Plaintiff Association",) is a corporation duly organized and existing under and by virtue of the laws of the state of Wisconsin, having its principal place of business in the town of Astico in the said state of Wisconsin and is a corporate citizen of said state of Wisconsin.

2. That all plaintiffs herein, other than said Plaintiff Association, and each of them, in the title hereof numbered 2 to 121 inclusive, (hereinafter in this Bill of Complaint styled and referred to as "Individual Plaintiffs",) are citizens and residents of the State of Wisconsin residing therein in the vicinity of the said town of Astico.

3. That defendant HENRY A. WALLACE is a citizen and resident of the city of Washington in the District of Columbia, and is the duly appointed, qualified and acting Secretary of Agriculture for the United States of America.

4. That defendant REXFORD GUY TUGWELL is a citizen and resident of the city of Washington in the District of Columbia, and is now the duly appointed, qualified and acting Under-Secretary of Agriculture for the United States of America, and on, to wit, the thirty-first day of May, 1934, was the duly appointed, qualified and acting Acting Secretary of Agriculture of the United States of America.

5. That defendant HOMER J. CUMMINGS is a citizen and resident of the city of Washington in the District of Columbia, and is the duly appointed, qualified and acting Attorney General of the United States of America.

6. That defendant DWIGHT H. GREEN is a citizen and resident of the city of Chicago, county of Cook and state of Illinois, and is the duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division.

7. That defendant FRANK C. BAKER is a citizen and resident of the city of Chicago and state of Illinois, and holds an office styled and known as Market Administrator, under color and by the pretended authority of a certain assumed license or purported regulation called "License No. 30 - License for Milk - Chicago Sales Area, as Amended," (which will hereinafter in this Bill of Complaint be more particularly referred to) and more specifically, by the pretended authority conferred upon him by Section E of Exhibit A to the said license.

8. That on, to wit, the twelfth day of May, 1933, an Act then passed by the Congress of the United States, was approved as the law and Statute of the United States of America, and which said law and Statute was entitled as follows:

> "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes",

which said Statute is popularly known and referred to as the Agricultural Adjustment Act (7 U.S.C.A. Chap. 26, Secs. 601 to 619); that the said Agricultural Adjustment Act hereinafter in this Bill of Complaint shall at all times be styled and referred to as "The Act".

9. That thereafter, on, to wit, the third day of February, 1934, the defendant HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture of the United States of America, acting under and in alleged pursuance to the pretended authority purportedly vested in him by Section 8 of The Act (7 U.S.C.A. Chap. 26, Sec. 608) and claiming and assuming to possess thereunder a lawful power to control and regulate, among others, Plaintiff Association's business hereinafter described, did execute and issue a certain license or regulation called "License No. 30 - License for Milk - Chicago Sales Area", which said pretended license purported by its terms and declaration to license and regulate each and every distributor of milk as therein defined, to engage in the business of distributing, marketing or handling milk or cream as a distributor thereof in the Chicago Sales Area, as therein defined, from and after 12:01 A. M., Eastern Standard Time, on the fifth day of February, 1934; that the said license was and is in words and figures as set forth in "Exhibit A" which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out.

10. That thereafter, on, to wit, the thirty-first day of May, 1934, the defendant REXFORD GUY TUGWELL, then acting as the duly appointed, qualified and acting Acting Secretary of Agriculture, acting under and in alleged pursuance to the pretended authority purportedly vested in him by Section 8 of The Act (7. U.S.C.A. Chap. 26, Sec. 608) and claiming and assuming to possess thereunder a lawful power to control and regulate among others, Plaintiff Association's business, hereinafter described, did execute and issue an Amended License, which did amend and modify the terms and conditions of the said "License No. 30 - License for Milk - Chicago Sales Area", and which said pretended license as thus amended did likewise by its terms and declaration purport to license and regulate each and every distributor of milk as therein defined, to engage in the business of distributing, marketing or handling milk or cream as a distributor in the Chicago Sales Area as therein defined from and after 12:01 A. M. Eastern Standard Time on the first day of June, 1934; that said license as amended was and is in words and figures as set forth in "Exhibit B" which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out.

11. That thereafter, on, to wit, the thirtieth day of June, 1934, the defendant HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture of the United States of America, acting under and in alleged pursuance to the authority purportedly vested in him by Section 8 of The Act (7 U.S.C.A. Chap. 26, Sec. 608) and claiming and assuming to possess thereunder a lawful power to control and regulate, among others, Plaintiff Association's business, hereinafter described, did execute and issue a certain amendment to "License No. 30 - License for Milk - Chicago Sales Area, as Amended", as described in Paragraph 10 hereof and set forth in Exhibit B hereto; which said amendment to "License No. 30 - License for Milk - Chicago Sales Area, as Amended", was by its declaration made effective from and after 12:01 A. M., Eastern Standard Time, on the first day of July, 1934; that the said amendment to "License No. 30 - License for Milk - Chicago Sales Area, as Amended", was and is in words and figures as set forth in "Exhibit C" which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out; that the said "License No. 30 - License for Milk - Chicago Sales Area, as Amended", set forth in Exhibit B to this Bill of Complaint, together with the said amendment thereto in this Paragraph described, shall hereinafter in this Bill of Complaint at all times be styled and referred to as "The License".

12. That since the effective date of The License, and for four years last past continuously theretofore, each and all of the Individual Plaintiffs have been and are now engaged in the business of dairy farming, and in the pursuit of their said several businesses each maintain milk cows and herds thereof, farms, barns and other equipment suitable for the production of milk and for producing milk in conformity with the applicable health requirements of the Chicago Sales Area as defined in The License, for milk to be sold for consumption as whole milk in the Chicago Sales Area, as defined therein; that the said Individual Plaintiffs and each of them, conduct their said several businesses wholly and exclusively within the territorial limits of the state of Wisconsin; that each and all

of the said Individual Plaintiffs sell all the milk so produced by them and each of them, to the Plaintiff Association; that the said sale thereof and the terms and conditions of the said salre are manifested by and in conformity to the terms and provisions of certain contracts or marketing agreements existing between the said Individual Plaintiffs and each of them and the Plaintiff Association, which said several contracts or marketing agreements hereinafter in this Bill of Complaint will be more particularly described; that each of the said Individual Plaintiffs has an investment of Three Thousand Dollars ($3,000.00) in the milk cows and herds thereof, farms, barns and other equipment used in the said production of milk by each of the said Individual Plaintiffs, and that the said milk cows and herds thereof, farms, barns and other equipment used by each of the Individual Plaintiffs as aforesaid, is of the present value of more than Three Thousand Dollars ($3,000.00); that each of the said Individual Plaintiffs if a "Producer" as defined in Paragraph A, part 1 of The License.

13. That the Individual Plaintiffs, and each of them, in the conduct of their said several businesses, after producing milk from and through their said milk cows and herds thereof and the equipment on their said farms situated and maintained as aforesaid in the said state of Wisconsin, do daily transport or cause the said milk so produced by them to be transported from their said several farms to the plant or dairy building of the Plaintiff Association at the said town of Astico in the state of Wisconsin where said milk is delivered into the possession of the Plaintiff Association by the several Individual Plaintiffs, and then and there sold by them to the said Plaintiff Association as aforesaid; that each of the foregoing transactions of the Individual Plaintiffs and each of them, and between the Individual Plaintiffs and each of them and the Plaintiff Association, namely, the producing, transportation and sale of milk, takes place at all times within the territorial limits of said state of Wisconsin and are and constitute local or intrastate agriculture, dairying and commerce within the meaning of the Constitution of the United States and especially within the meaning of the Commerce Clause of the Constitution of the United States, to wit, Article I, Section 8, Clause 3 thereof, and the same is not subject to regulation or control by the sovereignty of the United States pursuant to said Commerce Clause or pursuant to any other provision in the said Constitution contained, but is subject to regulation and control solely by the state of Wisconsin, and any attempt upon the part of the Congress of the United States or by any individual or body of individuals acting under color or by the assumed authority of any pretended law of Congress, to regulate and control the said intrastate agriculture, dairying and commerce of the said Individual Plaintiffs is unauthorized, illegal, unconstitutional and void.

14. That since the effective date of The License, and for five years last past, continuously theretofore, the Plaintiff Association has been engaged in the business of a distributor of dairy products; that in the course and conduct of its said business it purchases milk from producers thereof, as hereinbefore stated, which said purchase of milk by the Plaintiff Association from the producer is and has been at all times made at the dairy building or plant owned and operated by the said Plaintiff Association in the said town of Astico and state of Wisconsin, where the said

milk is delivered by the producers into the posession of the Plaintiff Association; that thereafter, the Plaintiff Association, in the conduct of its said business stores, pasteurizes, separates and processes the said milk so purchased at its said plant by the use of machinery and equipment therein; that the said milk, after being processed, as aforesaid, is sold by the Plaintiff Association to other distributors thereof who call therefor at the said plant of the Plaintiff Association, said sale by the Plaintiff Association to the other distributors being at all times made at the plant or dairy building of the said Plaintiff Association; that a great portion of the said milk so sold by the Plaintiff Association to other distributors has, for the five years last past, been ultimately consumed in the Chicago Sales Area as defined in The License; that since the effective date of The License all milk so sold and distributed by the Plaintiff Association has been ultimately consumed in the Chicago Sales Area as defined in The License; that the said Plaintiff Association is a distributor as defined in Section B of Part 1 of The License.

15. That all of the transactions set forth in Paragraph 14, which constitute the course of conduct of the Plaintiff Association's business as a distributor of milk, namely, the purchasing, storage, processing and sale of milk by the Plaintiff Association, take place at all times within the territorial limits of the said state of Wisconsin and are and constitute local or intrastate dairying and commerce within the meaning of the Constitution of the United States, and especially within the meaning of the Commerce Clause of the Constitution of the United States, to wit, Article I, Section 8, Clause 3 thereof, and the same is not subject to regulation or control by the sovereignty of the United States pursuant to said Commerce Clause or pursuant to any other provision in the said Constitution contained, but is subject to regulation and control solely by the state of Wisconsin, and any attempt upon the part of the Congress of the United States, or by any individual or body of individuals acting under color or by the assumed authority of any pretended law of Congress, to regulate and control the said intrastate dairying and commerce of the said Plaintiff Association is unauthorized, illegal, unconstitutional and void.

16. That the Plaintiff Association has an investment of approximately Fifty Thousand Dollars ($50,000.00) in its said dairy building or milk plant so adapted to and equipped for the conduct of its business as aforesaid, which said milk plant and the equipment therein, is located in the said town of Astico in the state of Wisconsin; and that the said plant and equipment therein are of the present value of Fifty Thousand Dollars ($50,000.00).

17. That said association has, from time to time, entered into certain contracts with each and all of the several Individual Plaintiffs, all of which said contracts are now in full force and effect, (a copy of all said contracts, saving and excepting respective differences in names of Individual Plaintiffs and in dates of execution of said several contracts) is in words and figures as set forth in "Exhibit D" which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out; that by the terms and conditions of each of the said contracts the Plaintiff Association agrees to buy from each of the Individual Plaintiffs all the milk produced by each of said Individual

Plaintiffs for a term of five years from the date of the execution of each of said contracts; that each of said contracts further provides that the Individual Plaintiffs, (in the said contracts styled and referred to as "producers") agree that in the event of a breach or threatened breach by any of said Individual Plaintiffs of any of the provisions of the said contract, the Plaintiff Association shall be entitled to an injunction to prevent a further breach thereof, and it, the said Plaintiff Association, shall also be entitled to a decree of specific performance thereof; that each of the said contracts further provides:

> "The Association agrees that it will either buy all the dairy products produced by or for the Producer or will act as the collective marketing agent of the producer and of other producers, it being expressly and mutually agreed that the Association may, in its discretion, as from time to time exercised, either purchase the said dairy products from said Producer or may act solely as his collective marketing agent; and the parties agree that the price which shall be paid to the Producer for said dairy products shall be the average price which the Association receives upon a re-sale thereof, minus a uniform charge on all the dairy products of the same grade, kind, type or quality to substantially cover the expense of operating the Association; average prices shall be based upon the Association's total receipts from the sale of dairy products of the same grade, kind, type or quality manufactured in the same period and under substantially similar conditions. The amount of the uniform charge and the elements to be included therein shall be conclusively determined by the Executive Committee of the Association, subject at all times to control by the Board of Directors thereof, and the uniform charge may include a sufficient amount to create such reserves as the Board of Directors or the Executive Committee may deem necessary to accord with sound business principles and said uniform charge shall include a sufficient amount for the payment of dividends upon any outstanding preferred stock of the Association.
>
> "The parties agree that in the discretion of the Executive Committee of the Association, subject at all times to the control of the Board of Directors thereof, the method of paying the purchase price of the dairy products delivered to the Association may be, to advance within a reasonable time after delivery to the Association, an amount to be determined by such Executive Committee or by such Board of Directors, and to pay the remainder, if any of the purchase price when the dairy products which are of the same grade, kind, type or quality of any one period to be fixed from time to time by the Board of Directors are entirely re-sold; that in its discretion the Board of Directors may order and cause to be made partial paymentsprior to the final distribution and may defer the final distribution until after all the dairy products of the same grade, kind, type or quality of any one period are sold."

That none of the said contracts between the several Individual Plaintiffs and the Plaintiff Association have lapsed, expired, been changed or abrogated, but all are now in full force and effect and all of said contracts have been continuously in full force and effect since on or before the first day of January, 1931; that the said contracts between the said several Individual Plaintiffs and the Plaintiff Association shall hereinafter in this Bill of Complaint be styled and referred to as "Marketing Agreements".

18. That acting under the said Marketing Agreements, the Plaintiff Association has since the effective date of The License, and at all times mentioned in this Bill of Complaint, and at all times since the execution of the said Marketing Agreements, or any of them, purchased all milk produced by Individual Plaintiffs herein, and has paid to the Individual Plaintiffs for their said milk the average price received by the Plaintiff Association for the resale thereof, minus a uniform charge on all the said milk of the same grade, kind, type or quality, to substantially cover the expense of operating the Plaintiff Association, but at no time since the effective date of The License, or at any other time mentioned in this Bill of Complaint, or at no time since the execution of the said Marketing Agreements, or any of them, has the Plaintiff Association acted as the agent, broker, factor or collective marketing agent of the Individual Plaintiffs, or any of them, under any or all of the said Marketing Agreements; that under and in conformity with the terms of the said Marketing Agreements and all of them, the Individual Plaintiffs have, since the effective date of The License, received an average price of One Dollar and thirty-seven cents ($1.37) for each hundredweight of milk of a 3.5% butterfat content, by them sold to the Plaintiff Association.

19. That Paragraph 1 of Part II of the License provides in part as follows:

> "Any contract or agreement entered into between any distributor and producer, prior to the effective date of this license, governing the purchase and/or delivery of milk, shall be deemed to be superseded by the terms and conditions of this License in so far as such contract or agreement is inconsistent with any provision hereof;"

that Paragraphs 1, 2 and 3 of Part II of The License and Exhibit A thereto set forth terms, provisions and price schedules which are inconsistent with and variant from the terms, provisions and price computation as provided for in the Marketing Agreements; that the said schedules of prices and the terms and provisions set forth in The License purportedly governing and controling the price at which and the terms and conditions under which the Plaintiff Association shall purchase and accept delivery of milk from said Individual Plaintiffs, would require and compel the Plaintiff Association to purchase milk produced by the Individual Plaintiffs at prices different from and upon terms and conditions substantially variant from those prices, terms and conditions which the Plaintiff Association has contracted with the Individual Plaintiffs to purchase their said milk by and under the Marketing Agreements set forth in "Exhibit D" hereto; that

if the Individual Plaintiffs were paid for their milk according to and in conformity with the terms of The License they would, since the effective date thereof, have received an average price of One Dollar and Fifty Cents ($1.50) per hundredweight for their said milk, but the Plaintiff Association would be required to pay therefor the sum of One Dollar and Seventy Cents ($1.70) per hundredweight for milk received by it during the months of February, March, April and May of 1934, One Dollar and Ninety-five Cents ($1.95) per hundredweight for milk received by it during the month of June, and Two Dollars and Twenty Cents ($2.20) per hundredweight for milk received by it during the month of July; the plaintiffs hereby tender as explanation of this paragraph the affidavit of NORMAN R. DIETZ, market "Exhibit E", which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out, and is tendered both as an explanation and as proof of the facts upon the application for a preliminary injunction prayed for in this Bill of Complaint.

20. That the said Individual Plaintiffs have the right, under the Constitution of the United States, to sell their milk to the Plaintiff Association, in the state of Wisconsin, where the said milk is produced, at such prices as may be agreed upon by and between the said Individual Plaintiffs, and the said Plaintiff Association, free from interference on the part of the government of the United States or any person, persons, or bodies of persons acting under pretended authority of any rule, license, regulation, law or statute of the said government of the United States, purportedly fixing and enforcing the payment of a price different from that agreed upon the the said parties and each of them, yet HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture of the United States of America, REXFORD GUY TUGWELL, as duly appointed, qualified and acting Under-Secretary of Agriculture of the United States of America, HOMER J. CUMMINGS, as duly appointed, qualified and acting Attorney General of the United States of America, DWIGHT H. GREEN, as duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division, and FRANK C. BAKER, as Market Administrator of the Chicago Sales Area under License No. 30 - License for Milk - Chicago Sales Area, as Amended, pretend and assert that under the assumed authority vested in them by The Act and The License, they, in their respective capacities as officers of the United States, have and possess the right to arbitrarily fix and maintain a price for milk sold by said Individual Plaintiffs to the said Plaintiff Association in the state of Wisconsin, and to punish the said Plaintiff Association if the price as prescribed in the said license as aforesaid is not paid to said Individual Plaintiffs, and if the said Plaintiff Association does not purchase milk from the said Individual Plaintiffs upon the terms and conditions prescribed in the said license.

21. That the said defendants, HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture of the United States of America, REXFORD GUY TUGWELL, as duly appointed, qualified and acting Under-Secretary of Agriculture of the United States of America, HOMER J. CUMMINGS, as duly appointed, qualified and acting Attorney General of the United States of America, DWIGHT H. GREEN, as duly appointed, qualified and

acting United States Attorney for the Northern District of Illinois, Eastern Division, and FRANK C. BAKER, as Market Administrator of the Chicago Sales Area under License No. 30 - License for Milk - Chicago Sales Area, as Amended, assert and contend that any contract or agreement entered into between any distributor and producer prior to the effective date of The License, governing the purchase or delivery of milk, and particularly the said several Marketing Agreements set forth in Exhibit D hereof, and each of them, is, by The License superseded and abrogated by the terms and provisions of The License, in so far as said contract or agreement or said Marketing Agreements, or any of them, are inconsistent with the provisions of The License, as is declared and provided in Section I of Part II of The License, and that the Marketing Agreements by the force and effect of the said provisions of The License are abrogated, and rendered null and void, although the said Marketing Agreements and each of them are mutually agreeable to the Individual Plaintiffs herein and to the Plaintiff Association, and although the said Marketing Agreements and each of them control and regulate only the intrastate production and sale of milk.

22. That the said Marketing Agreements and each of them, under which the Individual Plaintiffs sell their milk to the Plaintiff Association are agreeable to the said Individual Plaintiffs and each of them, and to the said Plaintiff Association, and are satisfactory and profitable to both the Individual Plaintiffs and each of them, and the Plaintiff Association, and both the Individual Plaintiffs and each of them and the Plaintiff Association desire to carry out the terms and conditions of said Marketing Agreements; that the Individual Plaintiffs do not wish to have the terms, provisions and conditions or schedules of The License imposed upon them, and do not wish to be compelled to pay any sum or sums out of any price which they may receive for their said milk to any individual or body of individuals for the support and maintenance of any regulation or control, but wish and desire to freely contract for the sale of their product on such terms as are to them and each of them agreeable and satisfactory.

23. That the single and only customer of the said Plaintiff Association is now and since the effective date of The License has continuously been MEADOWMOOR DAIRIES, INC., a corporation duly organized and existing under and by virtue of the laws of the state of Illinois, which said corporation is engaged in the purchasing, selling, distributing and vending of milk, cream and other dairy products within the Chicago Sales Area as defined in The License; that the said MEADOWMOOR DAIRIES, INC., before the passage of The Act, did, on, to wit, the third day of May, 1933, enter into a contract in writing with the said Plaintiff Association by the terms of which contract the said MEADOWMOOR DAIRIES, INC., agreed to purchase from the said Plaintiff Association,

> "so much milk and cream as the said MEADOWMOOR DAIRIES, INC., would sell and use in the daily operation of their wholesale and retail dairy business";

that the price of said milk to be sold by the said Plaintiff Association to the said MEADOWMOOR DAIRIES, INC., under and in conformity with the

terms of the said contract between them was to be f.o.b. car or tank at the said town of Astico in the state of Wisconsin; that in the Fourth Paragraph of said contract the price at which the said milk was to be sold was fixed; that in the Seventh Paragraph of the said contract it was provided that the milk sold thereunder to MEADOWMOOR DAIRIES, INC., be delivered,

> "pursuant to rules, ordinances and regulations which now exist or may hereafter be enacted or promulgated by any state or federal government or any federal bodies";

that the said Seventh Paragraph thereof provided,

> "The party of the second part (MEADOWMOOR DAIRIES, INC.), shall be relieved of its obligation to take any milk and cream thereunder unless all such milk is delivered pursuant thereto, and pursuant to the rules, laws, ordinances and regulations which now exist or which may hereafter be promulgated by any state or federal government or any federal bodies";

that it was at the time of the execution of the said contract and ever since has been the understanding of the contracting parties, to wit, the Plaintiff Association and MEADOWMOOR DAIRIES, INC., that the said Fourth Paragraph fixed for all times during the existance of said contract the price which the said Plaintiff Association was to receive for its said milk, and that the Seventh Paragraph thereof related solely to the conditions under which the milk must be delivered in the fulfillment of said contract; that the said Plaintiff Association and the said MEADOWMOOR DAIRIES, INC., have acted upon the construction and understanding aforesaid ever since the said date of the execution of said contract and that said price fixed in the Fourth Paragraph thereof has been adhered to throughout the existence of the said contract. That said contract further provides that,

> "this contract shall be for a period of one (1) year from the date hereof and the party of the second part (MEADOWMOOR DAIRIES, INC.) is hereby given an option to renew said contract for an additional period of one (1) year upon the same terms and conditions. This contract shall be binding upon the successors and assigns of both the parties hereto";

a copy of the said contract is in words and figures as set forth in "Exhibit F" which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set forth.

24. That before the expiration of the said contract and in accordance with the terms and provisions thereof, by notice duly given thereunder, the said MEADOWMOOR DAIRIES, INC., renewed the said contract with the said Plaintiff Association for a term of one year from the expiration date thereof, to wit, the third day of May, 1934, which renewal was duly accepted by the said Plaintiff Association, and the said contract is

now in full force and effect with and between the said MEADOWMOOR DAIRIES, INC., and the said Plaintiff Association and will so remain in full force and effect until the second day of May, 1935.

25. That under and in conformity with the terms and provisions of the said contract between the Plaintiff Association and MEADOWMOOR DAIRIES, INC., the Plaintiff Association is compelled and obliged to sell to the said MEADOWMOOR DAIRIES, INC., milk at a price which has been approximately One Dollar and Forty-seven Cents ($1.47) per hundredweight since the effective date of The License; the plaintiffs tender as explanation of this Paragraph the affidavit of GUY H. ADDISON, marked "Exhibit G", which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out, which is tendered both as an explanation and as proof of facts on the application for a preliminary injunction prayed for in this Bill of Complaint.

26. That the said contract between the Plaintiff Association and MEADOWMOOR DAIRIES, INC., is in full force and effect, and said MEADOWMOOR DAIRIES, INC., has given to the Plaintiff Association notice that it shall either bind and hold the Plaintiff Association to the fulfillment of the terms and conditions of the said contract, compelling the Plaintiff Association to sell to the MEADOWMOOR DAIRIES, INC., milk at the price in the said contract therein fixed and stated, or shall treat the said contract as abrogated, and cancelled, and shall refuse to buy from or accept delivery of any milk from the said Plaintiff Association whatsoever; that if the said Plaintiff Association is compelled to furnish, sell and supply the said MEADOWMOOR DAIRIES, INC., with milk at the price set forth and prescribed in and by the said contract, the absolute destruction of the business of the said Plaintiff Association will inevitably result therefrom, and great and irreparable financial damage will result to the said Plaintiff Association, for the reason that the said Plaintiff Association would be thereby compelled to sell its said milk to the said MEADOWMOOR DAIRIES, INC., for prices substantially less than the cost of the said milk to the Plaintiff Association would be if and assuming that the said defendants HENRY A. WALLACE, as duly appointed, qualified and acting Secretary of Agriculture of the United States of America, REXFORD GUY TUGWELL, as duly appointed, qualified and acting Under-Secretary of Agriculture of the United States of America, HOMER J. COMMINGS, as duly appointed, qualified and acting Attorney General of the United States of America, DWIGHT H. GREEN, as duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division, and FRANK C. BAKER, as Market Administrator of the Chicago Sales Area under License No. 30 - License for Milk - Chicago Sales Area, as Amended, would force and compel the Plaintiff Association to pay the Individual Plaintiffs for their milk under and in accordance with the terms and provisions of the License; that if the said MEADOWMOOR DAIRIES, INC., would treat the contract as abrogated, and refuse to buy milk from the Plaintiff Association under and in accordance with the terms of the said contract, the absolute destruction of the business of the said Plaintiff Association would inevitably result therefrom, and great and irreparable financial damage will result to the said Plaintiff Association for the reason that the said Plaintiff Association can now find no other purchaser of our outlet for its said milk, although the said Plaintiff Association

has canvassed and searched the Chicago milk market and other contiguous milk markets therefor, and has made due and careful inquiry into the state and condition of the said markets, and the Plaintiff Association could not at any time in the near future find any other purchaser of or outlet for its said products other than the said MEADOWMOOR DAIRIES, INC.; that if the business of the said Plaintiff Association were destroyed by either of the two means above described, or if the Plaintiff Association would be forced to temporarily suspend or cease business, the inevitable destruction and ruin of the several businesses and the several investments of the Individual Plaintiffs, hereinbefore described, would result therefrom, for the reason that the Individual Plaintiffs or none of them can find any other source or outlet for their said dairy products at prices near to or substantially as great as those received by the said Individual Plaintiffs from the said Plaintiff Association, under the terms of their said several Marketing Agreements, and, among other results, would be the impairment of the obligation of the said Marketing Agreements, which is forbidden by the Fifth Amendment to the Constitution of the United States of America.

27. That the said contract to sell milk and the said sale of milk by the said Plaintiff Association to the said MEADOWMOOR DAIRIES, INC., is satisfactory and profitable to both the said Plaintiff Association and the MEADOWMOOR DAIRIES, INC., and both the Plaintiff Association and the MEADOWMOOR DAIRIES, INC., desire to carry out the terms and conditions of the said contract.

28. Plaintiffs further allege that The Act is repugnant to and in violation of the Constitution of the United States and is invalid and void, particularly in:

A. That Congress has no authority under the Constitution of the United States to enact a regulation to enable the Secretary of Agriculture to fix the prices at which Plaintiff Association must buy its milk and at which Individual Plaintiffs must sell their milk.

B. That The Act deprives the plaintiffs of their liberty, property and businesses without due process of law.

C. That The Act denies to the plaintiffs the equal protection of the law.

D. That The Act provides for unreasonable searches and seizures of the property and effects of the Plaintiff Association.

E. That The Act delegates legislative power to the Secretary of Agriculture.

F. That The Act denies to the plaintiffs those certain rights retained by the people under the terms of Amendments Nine and Ten of the Constitution of the United States.

G. That The Act provides for the taking of private property from the plaintiffs for public use without just compensation.

H. That The Act delegates judicial power to the Secretary of Agriculture.

I. That The Act interferes with the plaintiffs' constitutional right to carry out their businesses and to freely contract in respect thereto.

J. That The Act attempts to make it a criminal offense for the Individual Plaintiffs to sell their milk and for the Plaintiff Association to buy its milk at prices satisfactory to both the Individual Plaintiffs and Plaintiff Association.

K. That The Act is so vague, uncertain and un-understandable as to be void for that reason.

L. That The Act is so vague and uncertain in its terms as to be incapable of being understood by a person of ordinary intelligence.

M. That The Act is void because it provides for no appeal to the courts from a decision of the Secretary of Agriculture revoking a license.

N. That The Act is unconstitutional for the reason that it delegates legislative power to the President of the United States.

O. That the enforcement of The Act and the administrative regulations thereunder, including said license, taxes one portion of the community of American citizens, including the plaintiffs, for the benefit of others, and for that reason is repugnant to the fundamental principles which underlie the Constitution of the United States.

P. That The Act permits and requires the impairment of the obligation of a contract previously entered into and valid in all particulars in that it requires both parties to abandon said contract and takes away from the parties thereto, including the said plaintiffs, the right to enforce the same by legal process and the property rights of said plaintiffs therein contained.

Q. That The Act enables the Secretary of Agriculture to fix price for commodities and property without a hearing thereon in regard to the price thus fixed and consequently deprives the plaintiffs of their property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.

R. That The Act purports to enable the Secretary of Agriculture, by his administrative ruling, to suspend, abrogate and nullify a certain valid and existing law and statute of the United States of America, to wit; "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, supplemented by "An act to supplement existing laws against unlawful restrainings and monopolies and for other purposes," approved October 15, 1914.

29. Plaintiffs further allege that The License is unauthorized, invalid and void in:

A. That the real, substantial though not ostensible purpose of The License is to regulate the price of farming and agricultural products, including dairy products, within the "insulated chambers" of the several states, including the state of Wisconsin.

B. That the terms and conditions of the License prevent and tend to prevent the effectuation of said declared policy of The Act as set forth and declared therein.

30. That plaintiffs further allege that The License is invalid, void and unauthorized and in contravention of the provisions of the Constitution of the United States in:

A. That said alleged finding of the said Secretary of Agriculture to the following effect set forth in The License: "that the marketing of milk for distribution as fluid milk in the Chicago Sales Area, and the distribution of said fluid milk, are entirely in the current of interstate commerce because said marketing and distribution is party interstate commerce and partly intrastate commerce and so inextricably intermingled that said interstate portion cannot be effectively regulated or licensed without regulating or licensing that portion which is intrastate commerce", is arbitrary, unreasonable, unfounded in fact and in law, and constitutes a mere administrative declaration of the law for the purpose of enabling the Secretary of Agriculture to usurp the powers reserved by the Constitution of the United States to the states thereof or the perople of the several states.

B. That under guise of said assumption, an attempt is made to fix the price of milk at the farms of the Individual Plaintiffs in said state of Wisconsin, upon which the said milk is produced, which production is intrastate commerce of Wisconsin, on the assumption that such is a valid regulation of the distribution of milk in said Chicago Sales Area.

C. That the licensing of "Each and every distributor to engage in the business of distributing, marketing, or handling milk or cream as a distributor in the Chicago Sales Area", is arbitrary, unreasonable and capricious, inasmuch as it requires a person, firm or corporation which sells but a small portion of his or its milk in said area and a far greater portion in another area, to be subject to said License and all the terms, conditions and provisions thereof.

D. That the said license is incapable of enabling the Secretary of Agriculture to fix the prices at which said plaintiffs must sell their milk or cream.

E. That said License deprives all of the plaintiffs of liberty and property and the right to enjoy the same without due process of law.

F. That said License denies to the plaintiffs equal protection of the law.

G. That said License provides for unreasonable searches and seizures of the property and effects of the plaintiffs.

H. That said License bestows legislative power upon the Secretary of Agriculture.

I. That said License denies to the plaintiffs those certain rights retained by the people under the terms of Amendments Nine and Ten of the Constitution of the United States.

J. That said License provides for the taking of private property from the plaintiffs for public use without just compensation.

K. That said License delegates judicial power to the Secretary of Agriculture.

L. That said License arbitrarily interferes with the plaintiffs' constitutional right to carry on their lawful businesses and freely to contract with respect thereto.

M. That said License attempts to make it a criminal offense for the plaintiffs to sell their milk and cream at prices satisfactory to the plaintiffs and the persons or corporations who purchase said milk and cream from said plaintiffs.

N. That said License is in its terms so vague, uncertain and un-understandable as to be void for that reason.

O. That said License is so vague and undertain in its terms as to be incapable of being understood by a person of ordinary intelligence.

P. That the enforcement of said License taxes one portion of the community of American citizens including the plaintiffs, for the benefit of others, and for that reason is repugnant to the fundamental principles that underlie the Constitution of the United States.

Q. That said License requires the impairment of obligation of contracts previously entered into and valid in all particulars, in that it requires both parties to abandon said contract and takes away from them, including said plaintiffs, the right to enforce the same by legal process, and likewise the property rights of the plaintiffs therein contained.

R. That said License fixes prices for commodities without a hearing thereon in regard to the prices thus fixed, and consequently deprives the plaintiffs of their property without due process of law, in contravention of the Constitution of the United States.

S. That the said Secretary of Agriculture, by his administrative ruling through said License, assumes to suspend, abrogate and nullify a certain valid and existing law and statute of the United States of America, to wit: "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, supplemented by "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914.

31. That the Plaintiff Association, is, by the terms of The License, required to report under oath to the Market Administrator, of and concerning matters and things of which that plaintiff, its officers, employees or agents have and can have no knowledge. That the said requirements are onerous, unreasonable and impossible and are not, by the terms of The License, imposed upon a large class of distributors whose business is ostensibly regulated and licensed under The License; the plaintiffs tender as explanation of this Paragraph the affidavit of GUY H. ADDISON, marked "Exhibit H", which is hereto attached and which is hereby made a part of this Bill of Complaing as fully as if herein set out, which is tendered both as an explanation and as proof of facts on the application for a preliminary injunction prayed for in this Bill of Complaint.

32. That Plaintiff Association is thereby subjected to a diminution and eventual destruction of its source of supply of milk, and that a large class of distributors whose business is ostensibly regulated under said purported License are not so subjected and endangered; the plaintiffs tender as explanation of this Paragraph the affidavit of GUY H. ADDISON, marked "Exhibit I", which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out, which is tendered both as an explanation and as proof of facts on the application for a preliminary injunction prayed for in this Bill of Complaint.

33. That said plaintiffs are, by the terms of The License, compelled and required to pay to the said Market Administrator, a greater sum for the support and administration of said pretended regulation and License and the terms, provisions and conditions thereof, than is demanded and required of members of a class of large distributors whose business is ostensibly similarly regulated thereunder; the plaintiffs tender as explanation of this Paragraph the affidavit of GUY H. ADDISON, marked "Exhibit J", which is hereto attached and which is hereby made a part of this Bill of Complaint as fully as if herein set out, which is tendered both as an explanation and as proof of facts on the application for a preliminary injunction prayed for in this Bill of Complaint.

34. That the License is discriminatory, confiscatory and void in that it fails to recognize the constitutional right of the plaintiffs to sell milk and cream direct to its customers at its place of business at a fair and reasonable price.

35. That The License is unconstitutional, null and void for the reason that it assumes the legal existance of an organization designated as the Pure Milk Association and makes certain regulations of said organization a standard for, and basis of, the regulations contained in said license and as fundamentally applicable to other distributors and producers, including said plaintiffs, who are not members of the Pure Milk Association. That there is no such legal entity as the Pure Milk Association for the reason that it was attempted to be organized under an alleged Act of the State of Illinois entitled, "An Act in Relation to Agricultural Co-operative Associations and Societies", approved June 21, 1932, as amended. That the said statute as amended is, on its face, unconstitutional and void for the reasons that:

A. Said statute denies to a numerous class of citizens, corporations and groups of the State of Illinois the equal protection of the laws;

B. Said statute grants to persons within said statute designated and authorized, a special and exceptional privilege in discrimination of other persons, corporations and groups, between which there is no inherent difference;

C. Said statute punishes one class of citizens and persons for the commission of a crime for which other classes of persons and citizens are by said statute exempted;

D. Said statute exempts all producers of agricultural commodities and raisers of livestock including dairy products, who combine their capital, skill or acts for any purpose named in said statute from oriminal prosecution, while it, at the same time, provides that all other persons, except producers of agricultural commodities and raisers of livestock, including dairy products, who combine their capital, skill or acts for any of the purposes named in the said statute, may be punished as criminals;

E. That although persons engaged in trade or sale of merchandise and commodities within the limits of the state, and agriculturists and raisers of livestock, including dairy products, are all in the same general class and all are alike engaged in domestic trade, which is of right open to all, subject to such regulations applicable to all in like condition as the state may prescribe, said statute exempts persons engaged in agriculture and raising of livestock, including dairy products, from punishment, while others not so engaged are made liable to the penalties of the statute;

F. Said statute prescribes that combinations of capital, skill or acts in respect of the sale or purchase of goods, merchandise or commodities whereby such combinations may, for their benefit, exclusively control or establish prices, are hurtful to the public interest and should be suppressed, yet at the same time, agricultural producers and raisers of livestock, including milk products, are exempt from the operation of said statute;

G. Said statute penalizes two or more persons engaged in the sale of dry goods or groceries or meats or fuel or clothing or medicines, who should combine their capital, skill or acts for the purpose of establishing, controlling or reducing prices or preventing free and unrestrained competition among themselves or others in the sale of their goods or merchandise, but permits other persons, groups or corporations who happen to be agriculturists or livestock raisers, including dairy farmers, to make combinations of that character in reference to their grain or livestock or dairy products without incurring the prescribed penalty;

H. Said statute permits a preponderant group of persons engaged on a large scale in activities affecting the general public interest in regard to domestic trade, to control prices for their own benefit as against the rights, privileges and immunities of the public generally;

36. That the said defendant HENRY A. WALLACE, in alleged conformity to Section 8 of The Act (7 U.S.C.A. Chap. 26, Sec. 608), devised and promulgated and seeks to put into effect said License, designated herein as "Exhibit A", without permitting a hearing thereon in regard to the prices to be established for the sale of milk, and as a result, "License No. 30 - License for Milk - Chicago Sales Area" is, as regards said plaintiffs, arbitrary, confiscatory and in violation of the Fifth Amendment of the Constitution of the United States.

37. That the said defendant REXFORD GUY TUGWELL, purporting to act as Acting Secretary of Agriculture, in alleged conformity to Section 8 of The Act (7 U.S.C.A. Chap. 26, Sec. 608), devised and promulgated and seeks to put into effect said Amended License, designated herein as "Exhibit B", without permitting a hearing thereon in regard to the prices to be established for the sale of milk and as a result "License No. 30 - License for Milk - Chicago Sales Area, as Amended" is, as regards said plaintiffs, arbitrary, confiscatory and in violation of the Fifth Amendment of the Constitution of the United States.

38. That the said defendant HENRY A. WALLACE, in alleged conformity to Section 8 of The Act (7 U.S.C.A. Chap. 26, Sec. 608), devised and promulgated and seeks to put into effect said Admendment to said Amended License designated herein as "Exhibit C", without permitting a hearing thereon in regard to the prices to be established for the sale of milk, and as a result the said Amendment to "License No. 30 - License for Milk - Chicago Sales Area, as Amended", is, as regards said plaintiffs, arbitrary, confiscatory and in violation of the Fifth Amendment of the Constitution of the United States.

39. That the Plaintiff Association now conducts and operates its said distributing business in a wholly legal and proper manner but that its manner and method of operation thereof is in violation of the terms and restrictions of said purported license; and that the Plaintiff Association can not conform to the terms and restrictions of said purported license and continue longer in its said business, and as a consequence thereof to enforce The License would confiscate the business of said Plaintiff Association.

40. That the Plaintiff Association further alleges that it is the purposes and intent of the said defendants, their successors, agents, servants, employees and assistants to attempt to enforce as against said plaintiff, among others, The Act, and all of the regulations, restrictions and rules purporting to have been promulgated under the authority thereof with the intent under color of said statute and under said regulations, restrictions and rules (heretofore referred to as The License) to force this Plaintiff Association to give up and abandon its business.

41 That for the reasons and in the manner last aforesaid, Plaintiff Association will be subjected to a multiplicity of prosecutions and to expenditures of large sums of money in defense thereof, for alleged violations of The Act and The License; or the Plaintiff Association will be wrongfully and by duress and coercion forced into compliance of the terms

of the License and regulations, restrictions and rules, which will inevitably result in the destruction of Plaintiff Association's business and the loss of its property rights therein and also in the loss of the property rights of said other plaintiffs and in their farms and dairies, and the right to dispose of the products thereof.

42. That the said defendants, HOMER J. CUMMINGS and DWIGHT H. GREEN, who are, as heretofore alleged, respectively, the duly appointed, qualified and acting Attorney General of the United States and the duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division, and who are charged by the laws of the United States with the duty of prosecuting all violations of the laws of the United States committed within the said district, aided and abetted, by said defendants HENRY A. WALLACE, REXFORD GUY TUGWELL and FRANK C. BAKER, will, under color of the terms of The Act and The License, cause appropriate proceedings to be commenced and prosecuted in the proper courts of this district without delay for the enforcement of the penalties therein provided and for an injunction enjoining the Plaintiff Association from further conducting its said business, and the Plaintiff Association further avers that the said DWIGHT H. GREEN, unless restrained from so doing, will cause proceedings to be commenced and prosecuted for the enforcement of the penalties provided by said pretended law against said Plaintiff Association and others similarly situated, with the result that said Plaintiff Association will be subjected to many prosecutions, as The Act makes a single violation on a single day a separate offense, which will subject it to irreparable injury and loss.

43. That the said defendants insist that a vast sum of money, to wit, about the sum of Fifteen Thousand Dollars ($15,000.00) derived from the sale of their milk, as aforesaid, be turned over to said defendant FRANK C. BAKER by the Plaintiff Association to be put into an alleged pool to be distributed by the said FRANK C. BAKER; that the payment of said money into said pool would be arbitrary and confiscatory of the money and in violation of the property rights of said Plaintiff Association and would constitute a seizure of its property under guise of regulation and taxation and a distribution of the same to other persons, who by the terms of the said license are accorded a special privilege of securing the same in the manner alleged.

44. That the said plaintiffs have no plain and adequate remedy at law, and unless the said defendants, their successors, agents, servants, employees and assistants shall be restrained from attempting to enforce against said plaintiffs said unconstitutional Act, and said unconstitutional License, plaintiffs' said businesses and each of them shall be wholly and immediately destroyed, together with their right to engage therein, and the plaintiffs and each of them, will thereby suffer great and irreparable loss, injury and damage.

45. WHEREFORE, the premises considered, the plaintiffs pray:

A. That The Act be declared to be in violation of all said plaintiffs' rights in that it is not authorized by the Constitution of the United States and is in violation thereof.

B. That The License be declared to be in violation of the Constitution of the United States, not supported by any valid statute of the United States, and to be arbitrary, confiscatory, impossible of ascertainment and void.

C. That the defendants and each of them, their successors, agents, servants, employees and assistants be temporarily and permanently enjoined from in any way or manner, by reason of the apparant force of said Act of Congress, or said regulations from interfering with, destroying, confiscating as above alleged, the said business of the said Plaintiff Association and the rights and property of the Individual Plaintiffs, and prosecuting criminally as above alleged, the said plaintiffs.

D. That the said defendants, and each of them, their successors, agents, servants, employees and assistants be temporarily and permanently enjoined from in any way or manner enforcing or attempting to enforce against the plaintiffs The Act and The License or any portion or part, term, condition or schedule thereof, and from causing to be instituted any civil proceedings as against said plaintiffs under The Act or The License, or any of the provisions, part, term, condition or schedule thereof.

E. That after due notice, a temporary restraining order be granted because of the fact, as alleged herein, that an irreparable loss or damage will result to said plaintiffs unless said temporary restrining order be granted.

F. That the plaintiffs have such other and further relief as is just and reasonable and to this Court shall seem meet.

1. COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, a corporation, 2. SAM M. AUSTIN, 3. GEORGE H. BENNINGER, 4. ARTHUR BEDERMAN, 5. ERWIN L. BIEL, 6. WILLIAM BIELKE, 7. LAWRENCE BIRKENSTOCK and OSCAR BIRKENSTOCK, a co-partnership, doing business as and under the firm name and style of BIRKENSTOCK BROTHERS, S. A. E. BIRKENSTOCK, 9. PAUL BLATZ, 10. LEO BLASCHKA, 11. EDWARD BOETCHER, 12. A. H. BRAKER, 13. WILLIAM BREYER, ELMER BREYER and LAWRENCE BREYER, a co-partnership, doing business as and under the firm name and style of WILLIAM BREYER & SONS, 14. AUGUST BUCHHOLZ, 15. WILLIAM H. CALL, 16. B. A. CONLIN, 17. JAMES CROMBIE, 18. JOHN B. CROMBIE, 19. RAYMOND CROSSMAN and J. KIRK CROSSMAN, a co-partnership, doing business as and under the firm name and style of CROSSMAN BROTHERS, 20. HENRY B. DOLAN, 21. LOUIS DOBIS, 22. HENRY DUBORG, 23. MARY DUFFY, 24. EARL FIELDS, 25. CHARLES H. FINGER, 26. H. A. FREDERICK, 27. BUDD FREY, 28. HERMAN F. SCHMIDT, 29. HOWELL GRIFFITH, 30. BEN GROENING, 31. RAY W. HASKEY, 32. AUGUST HANNAMANN, JR., 33. CARL HATZINGER, 34.

LOUIS HATZINGER, 35. RAYMOND HEIDEMANN, 36. EDWARD HENKE, 37. FRED HENKE, 38. FRANK HENNING, 39. FRED HEPPE, 40. LEONARD HERZBERG, 41. EDWARD HERZBERG, 42. CHARLES H. HOLSTEN, 43. DONALD HOLT, 44. RUDOLF HOMANN, 45. H. H. HUGGETT, 46. WILLIAM HUNDLEY, 47. ARTHUR HURCKMAN, 48. CHARLES JAHNKE, 49. JOHN D. JONES, 50. OWEN T. JONES, 51. WILLIAM E. JONES, 52. WILLIAM O. JONES, 53. JOHN E. JOHNSON, 54. THERON JOHNSON, 55. JOHN KANT, 56. JOSEPH KENNEDY, 57. FRED KENNING, 58. M. A. KIESOW, 59. HAROLD KITZEROW, 60. ALBERT KRUEGER, 61. JOHN LANGEFELDT, 62. FRANK LEISMAN, 63. EMIL P. LEISTIKOW, 64. HERMAN A. LENZ, 65. EMERY LENZ, 66. JOHN LEWIS, 67. CLARENCE F. LIENKE, 68. OTTO F. LIENKE, 69. JOHN J. LOBECK, 70. FRANK LOBECK, 71. ERNEST LOEFFLER, 72. ADDIE LYNCH, 73. ALBERT MAIER, 74. THOMAS F. MANLEY, 75. ALBERT MARTIN, 76. LAWRENCE METZGER, 77. RAYMOND MEYERS, 78. BERNIE NICKELSON, 79. ROBERT W. MILLER, 60. ROBERT MILLER, 81. THOMAS MULLIGAN, 82. BRUCE NASHOLD, 83. JULIUS PETRICK, 84. EDWARD M. POSER and EDWARD W. GAUMITZ, a co-partnership, doing business as and under the firm name and style of POSER & BAUMITZ, 85. EDWARD M. POSER and JOSEPH GROH, a co-partnerhip, doing business as and under the firm name and style of POSER & GROH, 86. NICK POWERS, 87. GUST RAHN, 88. PAUL RAHN, 89. CLEM RAKE, 90. THOMAS H. ROBERTS, 91. A. J. ROEDL, 92. EARL RUETER, 93. CHARLES SAUER, 94. CHRIS. SAUER, 95. ALBERT SALZMAN, 96. WILLIAM SCHLEICHER, 97. AUGUST SCHLIEF, JR., 98. PAUL SCHLIEF, 99. LENA SCHMELING, 100. ROBERT SCHMIDT, 101. R. E. SCHRAB, 102. EMIL F. SCHULTZ, 103. HERBERT SENNHENN, 104. H. W. STANGE, 105. OTTO SCHWOCK, 106. ARTHUR STARK, 107. ALLEN W. SUMNICHT, 108. F. A. SUMNICHT, 109. H. J. THIEDE, 110. FRANK WALASHEK, 111. J. C. WATERWORTH, 112. THOMAS WATERWORTH, 113. RALPH C. WEBSTER, 114. JOHN WEISENSEL, 115. ARTHUR H. WEINER, 116. RAYMOND WEINER, 117. HENRY C. WESTPHAL, 118. OTTO WHITEFOOT, 119. HAROLD WRIGHT, 120. EDWARD YERGES, and 121. WALTER ZIMBRICH, Plaintiffs,

BY: JOSEPH R. ROACH and
#10 NORTH CLARK STREET
CHICAGO, ILLINOIS

JOSEPH E. GREEN
#1 NORTH LASALLE STREET
CHICAGO, ILLINOIS

THEIR SOLICITORS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Columbus Milk Producers Cooperative Association et al	)	
	)	Equity
v.	)	
	)	No. 13985
H. A. Wallace, et al.;	)	

EXHIBITS D, E, F, G, H, I, and J.

E X H I B I T D

MARKETING CONTRACT OF THE COLUMBUS MILK PRODUCERS' CO-OPERATIVE ASSOCIATION

(1) The following agreement is hereby made by the Columbus Milk Producers' Co-Operative Association, a co-operative association organized under the laws of the State of Wisconsin, hereinafter called "the Association", and _____, a Producer of dairy products whose address is _____ hereinafter called "the Producer", the promises of each party being in consideration of the promises of the other, and in consideration of the promises of other producers on similar contracts.

(2) This contract shall be in effect for the term ending May 31st, 1935; it shall continue in effect for successive terms of five years each after the expiration of the original term subject to the right of either party to terminate liability hereunder after the expiration of any such five year term by giving written notice by registered mail to the other party not more than six (6) months nor less than four (4) months prior to the expiration of any such five year term.

(3) The Producer agrees that he will sell to or through the Association all dairy products produced by or for him throughout the term of this contract, including all extensions thereof; and the parties hereto expressly agree that all dairy products produced on land either owned by or leased to the Producer either by the Producer or by any member of his family or by any person who takes said dairy products or the benefits thereof, or any part of said dairy products or of said benefits for labor or other consideration is intended to be included in this contract; and also that any and all sales outside of the Association of any dairy products produced on any land over which the producer has any dominion or control whatever either as owner or tenant shall to the extent of his interest in said land either as owner or tenant, be construed to be evasions of this contract and breaches thereof; and the Producer agrees that he will deliver such dairy products at the time and place and in the manner directed by the Association, and that in the production and in the handling of said products, he will comply with all rules, regulations, requirements and by-laws of the Association, and with all laws, applicable thereto.

(4) The producer agrees that in the event of breaches of this contract he will pay to the Association as liquidated damages thirty (30%) per cent of the value of the dairy products not delivered by him under the provisions hereof, and the said damages may be deducted from any money due to the Producer either from the Association or from any person under it.

(5) The Producer agrees that in the event of a breach or threatened breach by him of any of the provisions of this contract the Association shall be entitled to an injunction to prevent breach or further breach thereof and shall also be entitled to a decree of specific performance hereof.

(6) The Association agrees that it will either buy all the dairy products produced by or for the Producer or will act as the collective marketing agent of the Producer and of other producers, it being expressly and mutually agreed that the Association may, in its discretion, as from time to time exercised, either purchase the said dairy products from said Producer or may act solely as his collective marketing agent; and the parties agree that the price which shall be paid to the Producer for said dairy products shall be the average price which the Association receives upon a re-sale thereof, minus a uniform charge on all the dairy products of the same grade, kind, type or quality to substantially cover the expense of operating the Association; average prices shall be based upon the Association's total receipts from the sale of dairy products of the same grade, kind, type or quality manufactured in the same period and under substantially similar conditions. The amount of the uniform charge and the elements to be included therein shall be conclusively determined by the Executive Committee of the Association, subject at all times to control by the Board of Directors thereof, and the uniform charge may include a sufficient amount to create such reserves as the Board of Directors or the Executive Committee may deem necessary to accord with sound business principles and said uniform charge shall include a sufficient amount for the payment of dividends upon any outstanding preferred stock of the Association.

(7) The parties agree that in case of purchase and sale by the Association the absolute title to the said products shall pass to the Association upon delivery of the said products to the Association; that the Association has the right to borrow money on the security of any and all dairy products delivered to it and on the security of the proceeds thereof.

(8) The Producer agrees to pay One ($1.00) Dollar for one share of common stock as his entrance fee.

(9) On all products sold through but not to the Association the Producer agrees that the Association may authorize the buyer of such products sold through the Association, to remit all money due the Producer, for dairy products delivered by him, directly to the Association, which money the Producer authorizes the Association to collect and receive from the buyer without any further order from the Producer.

(10) The parties agree that the Association may pool or mingle all of the dairy products which are of a like grade, kind, type or quality delivered to it under substantially similar conditions; that the Association's grading and classifications shall be conclusive.

(11) The parties agree that in the discretion of the Executive Committee of the Association, subject at all times to the control of the Board of Directors thereof, the method of paying the purchase price of the dairy products delivered to the Association may be, to advance within a reasonable time after delivery to the Association, an amount to be determined by such Executive Committee or by such Board of Directors, and to pay the remainder, if any, of the purchase price when the dairy products which are of the same grade, kind, type or quality of any one period to be fixed from time to time by the Board of Directors are entirely re-sold; that in its discretion the Board of Directors may order and cause to be made partial payments, prior to the final distribution and may defer the final distribution until after all the dairy products of the same grade, kind, type or quality of any one period are sold.

(12) The parties agree that the advance payments shall be in as large amounts as are possible in accord with sound business practice, and that the said advances shall be made as nearly as possible on the same dates as it is generally customary with the trade to make payments on dairy products of the same kind, and at all events as soon after delivery thereof as is possible in accord with sound business practice; it is contemplated that the first of such advances shall usually be made on or about the 5th and the second advance on or about the 20th day of the month following the delivery of said products to the Association. The Association may in its discretion make payment of not to exceed twenty (20%) per cent of the said advances by itspromisso ry note bearing six (6%) per cent interest due not more than one hundred twenty (120) days from the date of such advance.

(13) The parties agree that in the discretion of the Executive Committee of the Association, subject at all times to the control of its Board of Directors, an amount not to exceed four (4%) per cent of the value of the product may be retained out of the purchase price of all products delivered to or through the Association hereunder, for the purpose of providing a fund for theAssociation and that for this amount the Association shall issue to the Producer its certificates of indebtedness due not more than six years after their dates, and dated not later than the last day of December of each year bearing interest at not less than four (4%) per cent and not more than six (6%) per cent per annum. This fund may be used to retire loans, to make permanent improvements, to purchase equipment, and provide working capital.

(14) It is expressly and mutually agreed that the Association may delegate to representatives of local producers or to state, regional, or national co-operative marketing associations any or all the powers hereby conferred upon the Association upon such terms as may be agreed on and that the Association may enter into contracts upon such terms as may be agreed on with any other co-operative associations and or with any agency organized in furtherance of and in conformity with the provisions of the Act of Congress known as the Agricultural Marketing Act approved June 15, 1929, and acts amendatory thereto.

(15) It is expressly agreed that any and all said dairy products may be by the Association manufactured or processed in any manner, as from time to time authorized by the Board of Directors, and that for the purpose of such manufacturing and processing, the Association may purchase or erect and may equip factories and storage warehouses and other facilities, and that such factories, storage warehouses and other facilities, may be either operated by the Association or leased by it to others; and the Association shall have the right to deduct from the amount which would otherwise become due and payable to such producers, such sum of money as will, in not less than ten years of time, pay the cost of such facilities and for such deductions the Association shall at least annually issue to the Producer its fully paid certificates of preferred stock.

(16) The parties agree that the requirements contained in this contract shall not affect the right of the Producer to retain dairy products for the use of himself and of his employees and of the members of their immediate families or to sell in his own retail trade.

(17) This contract shall replace any former contract between the parties hereto from and after the date of its acceptance by the Association.

(18) This contract shall be in force and effect from the date of its acceptance by the Association if so accepted within four (4) months of the date hereof, provided at least _____ producers shall have signed similar contracts by such date.

Signed this _____ day of _____, 1931.
Accepted this _____ day of _____, 1931.

_____
Producer

Solicited by:

COLUMBUS MILK PRODUCERS' CO-OPERATIVE ASSN.

_____ BY _____
President

The undersigned producers hereby sign the above contract and agree to become bound upon the same in the manner therein provided.

Name.	Date.
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

EXHIBIT E

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

AFFIDAVIT OF NORMAN R. DIETZ

NORMAN R. DIETZ, being first duly sworn upon his oath deposes and says:

1. Affiant's name is NORMAN R. DIETZ; he is a resident of the Villate of Park Ridge, County of Cook and State of Illinois.

2. Affiant has been continuously connected with and engaged in the milk and dairying business in the capacity of distributor and association official for the three years last past before the making of this affidavit. Affiant is familiar with existing conditions in the Chicago Milk Shed and in the Chicago Sales Area as defined in "License No. 30 - License for Milk - Chicago Sales Area, as Amended", and has made a study of the terms, provisions and conditions of the "License No. 1 - License for Milk - Chicago Milk Shed", effective August 1, 1933, and of the terms, provisions and conditions of "License No. 30 - License for Milk - Chicago Sales Area", effective February 5, 1934, of the terms, provisions and conditions of "License No. 30 - License for Milk - Chicago Sales Area, as amended", effective June 1, 1934, and of the Amendment thereto which became effective July 1, 1934. Affiant further knows the blended prices as announced by FRANK C. BAKER, Market Administrator for the Chicago Sales Area for each delivery period since the effective date of "License No. 30 - License for Milk - Chicago Sales Area", and is familiar with the wholesale Chicago butter market for the period of two years last past, and also knows the butter prices as computed by FRANK C. BAKER, as said Market Administrator.

3. Affiant is now, and for more than one year last past has been an officer, to wit, the President of the INDEPENDENT MILK DISTRIBUTORS ASSOCIATION OF NORTHERN ILLINOIS, a corporation not for pecuniary profit, duly organized and existing under and by virtue of the laws of the State of Illinois, and in his capacity as President of the said Association has had contact and business experience and has familiarized himself with the problems of more than fifty per cent of the distributors of milk and dairy products in the Chicago Milk Shed, including the plaintiff COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, and MEADOWMOOR DAIRIES, INC. Affiant further is familiar with the classification or ultimate use of milk sold by the COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION to MEADOWMOOR DAIRIES, INC., and the terms of the Marketing Agreements referred to in the Bill of Complaint as reported by said MEADOWMOOR DAIRIES, INC., to FRANK C. BAKER, as Market Administrator.

4. From the knowledge, experience and study that affiant has had, as hereinbefore described, and from his knowledge of the prices announced by FRANK C. BAKER as aforesaid, he is able to make a true and correct analysis of the method and manner of computing the price of milk under and in conformity with the schedules, provisions and conditions of "License No. 30 -License for Milk - Chicago Sales Area", effective February 5, 1934, "License No. 30 - License for Milk - Chicago Sales Area, as Amended", effective June 1, 1934, and under the Amendment thereto, effective July 1, 1934, and to compute the same, and to state the factors and conditions existing in the Chicago Milk Market independent of the said License, which enter into the determination of the said price of milk as computed thereunder.

PART I.

METHOD OF COMPUTATION OF PRICE OF MILK UNDER LICENSE

The License recognizes or establishes no fixed or uniform price which is to be received by the dairy farmer for the sale of his product, or which is to be paid by the distributor for the purchase thereof, but rather furnishes a formula by which, at the end of each month, the Market Administrator is able to compute what price is to be paid to the producer and what the cost to the distributor is to be. Into this formula, as it will be seen, enter a number of variables and unconstants, some gathered from sources independent of the milk industry and others from actual conditions which existed within the milk industry of the Chicago Market during the period for which the price is being computed. But at no time can the distributor predict what his product will cost him, nor can the producer rely upon being paid any certain price. Both must carry on their business throughout the month and await the outcome of the Market Administrator's calculations made the following month to determine what the prices they are to pay and to receive are to be.

The first important thing that is to be recognized is that the License establishes three separate and distinct prices that are to be paid for milk, which depend not upon the quality or grade of milk or upon the proximity of the producer to the Chicago Market, as might be imagined, but rather upon the ultimate use which is made of the product, that is, whether the milk is ultimately consumed as whole milk, as cream, or as some manufactured product thereof.

Paragraph 1 of Section A of Exhibit A of The License provides in part as follows:

> "1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 percent butterfat content, which he has purchased from producers, delivered f.o.b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I - $2.25 per hundredweight.

Class II - For each one hundred pounds of milk - to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III - For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License."

Paragraph 2 of Section A of Exhibit A to The License defines the three classes as follows:

"2. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Chicago Sales Area.

"Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption within the Chicago Sales Area and for the manufacture of ice cream mix or ice cream for consumption in the Chicago Sales Area. The term "cream" shall hereinafter be deemed to include "ice cream mix and ice cream".

"Class III milk means the quantity of milk purchased, sold, or used or distributed by distributors in excess of Class I and Class II milk."

Thus three separate and distinct prices are established. It may be here stated that under the prevailing price of 92 score of butter in the Chicago market as reported daily by the United States Department of

Agriculture, the price of Class II milk approximates $1.23 per hundredweight and the price of Class III milk approximates 89¢ per hundredweight.

Thus, according to the provisions of The License the distributor who purchases milk which is used entirely as whole milk must pay over three times as much for his product as does the distributor who purchases milk which is ultimately used as butter. A hundredweight of milk, therefore, has no fixed or definite value to the purchaser, but its value and the price which he must pay for it, under the provisions of The License, is determined and regulated by the use to which it is ultimately put.

But although the price to be paid by the distributor for milk differs depending upon the use made of the milk by the particular distributor, the price each farmer is to receive for his milk is uniform. In order to understand the workings of The License it is necessary to keep in mind the distinction between the price the purchaser of milk must pay for it and the price the seller of milk will receive for it. This condition of having the purchaser of a product pay a larger or a smaller price for the milk than the seller of the product receives for it, is attained by following the system of regimentation hereinafter explained, which is provided for in The License.

Paragraph 4, Section A of Exhibit A to The License provides as follows:

> "On or before the 7th day of each delivery period, each distributor to whom milk or cream was delivered during the preceding delivery period by (1) producers (who are not also distributors) and/or (2) distributors (other than those who operate only stores or other similar establishments) shall report to the Market Administrator with respect to milk or cream delivered during such delivery period in a manner prescribed by the Market Administrator:
>
> (1) The actual deliveries, if any, at each location of the producers supplying such distributor, the total quantity of milk represented by the delivered bases of all such producers, and the total quantity of milk represented by the excesses over delivered bases of all such producers;
>
> (2) The actual deliveries, if any, made to him by other distributors;
>
> (3) The quantities of milk delivered which were sold, used or distributed by him as Class I, Class II and Class III milk, respectively, and
>
> (4) Such other information as the Market Administrator may request for the purpose of performing the provisions of this Exhibit."

This, briefly, requires each distributor in the Chicago Sales Area to report to the Market Administrator advising him how much milk he purchased and what use was made of it the preceding month. The Market Administrator, then having this information, is required, under the provisions of Paragraph 5, Section A of Exhibit A to The License, to obtain the value of the average hundredweight of milk used in the Chicago Sales Area during the preceding month (designated in The License as the delivery period.)

The method of obtaining this average value is as follows: Assuming for the purposes of simplicity that only three distributors exist in the Chicago market and that only 6,000,000 pounds of milk is received monthly therein, the reports received by the Market Administrator might be as follows: "Distributor A" might report that he used 1,500,000 pounds of milk in bottles for sale as whole milk, 500,000 pounds for the manufacture of cream, and that no milk was used for the manufacture of butter. "Distributor B" might report that he used 500,000 pounds as whole milk, 1,000,000 pounds for cream and 500,000 pounds for the manufacture of butter. "Distributor C" might report that no milk whatsoever was used by him as whole milk, that 500,000 pounds was used for cream and that 1,500,000 pounds was used for butter. The Market Administrator might then chart the market as follows:

	Class I.	Class II.	Class III.	Total hundredweight used by each distributor.
"Distributor A"	1,500,000 lbs.	500,000 lbs.	- - -	20,000 cwt.
"Distributor B"	500,000 lbs.	1,000,000 lbs.	500,000 lbs.	20,000 cwt
"Distributor C"	- - -	500,000 lbs.	1,500,000 lbs.	20,000 cwt.
Total hundredweight used in each class	20,000 cwt.	20,000 cwt.	20,000 cwt.	Gross poundage 60,000 cwt.

The Market Administrator must then obtain the total value of all milk used in the market. This is done by multiplying the total number of hundredweight of milk used in each class by the price prescribed in The License for that class and totaling the results obtained:

Class I:	20,000 (cwt) x ($) 2.25	=	$45,000
Class II:	20,000 (cwt) x ($) 1.23	=	$24,600
Class III:	20,000 (cwt) x ($) .89	=	$17,800
			$87,400 Total value

of all milk used in market.

Thus the Market Administrator would have $87,400 as the value of all the milk that was used in the Chicago market the preceding month. Next the value of the average hundredweight would be obtained by dividing the total number of hundredweight used into the total value of all milk used, thus: ($) 87,400 ÷ 60,000 (cwt) = $1.46.

This figure of $1.46, obtained in our example, will then be set down by the Market Administrator as what is denominated in The License as "the blended price".

(In the above computation, various deductions and adjustments, (dependent upon the distance of producers from the City Hall of (the City of Chicago, upon the butterfat content of the milk (sold by producers, upon whether or not the producers are mem- (bers of the Pure Milk Association, and upon what base is as- (signed the producers, have been omitted for the purpose of (simplicity. These deductions and adjustments will be later (explained.

The blended price for the delivery period thus being established as $1.46, the Market Administrator, in conformity with the provisions of The License, notifies each distributor of this result, and thereafter each distributor is required to pay to the producers from whom he purchased milk during the past month this amount for each hundredweight of milk they delivered. Thus each of the three producers, in our example, would pay $29,200 to the farmers (20,000 (cwt) x $1.46 = $29,200).

Now, in accordance with the provisions of Paragraph 8, Section A of Exhibit A to The License, adjustment accounts, popularly referred to as the equalization pool are maintained for each distributor. If any distributor has paid to his producers, as above described, more than the value of the milk was to him, according to the price schedules of The License for the previous month, he will be paid the amount of this excess he has paid by the equalization pool. If, on the other hand, he paid the producers, as above described, from whom he purchased milk less than the value of the milk was to him, he will be required to pay this deficiency into the equalization pool. In our example the following would be the result:

Value of Milk to "Distributor A"

Class I:	15,000 (cwt) x ($) 2.25	=	$33,750
Class II:	5,000 (cwt) x ($) 1.23	=	$ 6,150
			$39,900.

Value of Milk to "Distributor B"

Class I:	5,000 (cwt) x ($) 2.25	=	$11,250
Class II:	10,000 (cwt) x ($) 1.23	=	$12,300
Class III:	5,000 (cwt) x ($) .89	=	$ 4,450
			$28,000

Value of Milk to "Distributor C"

Class II:	5,000 (cwt) x ($) 1.23	=	$ 6,150
Class III;	15,000 (cwt) x ($) .89	=	$13,350
			$19,500

As each distributor paid his producers $29,200 (20,000 cwt. x $1.46) we have "Distributor A" owing $10,700 into the equalization pool (39,900 - 29,200 = $10,700), "Distributor B" receiving $1,200 from the equalization pool (29,200 - 28,000 = 1,200), and "Distributor C" receiving $9,700 (29,200 - 19,500 = $9,700). (An inaccuracy of $200 exists in the above calculation, due to failure to carry the blended or average price into fractions of a cent. More correctly, the blended figure is $1.45 2/3).

The above is the analysis reduced to its most essential steps, showing the method prescribed by The License for obtaining the price of milk for any period. However, various deductions and adjustments have been ignored in this computation, which must now be explained.

The first notable adjustment which is made in the price paid to producers by the distributors under the said License is that determined by the butterfat content of milk. An arbitrary butterfat content of 3.5 percent is adopted by The License as the mean from which the adjustment is to be computed. As a factual matter, milk produced in and about the Chicago Sales Area averages approximately 3.4 to 3.5 butterfat content. The higher the butterfat content, the more valuable the milk is to the particular distributor in any use to which it may be employed by him. Likewise, the lower the butterfat content, the lesser the value. In recognition of this difference, The License requires that the distributor pay 4¢ per hundredweight for each 1/10 of one percent butterfat content that the milk furnished by any producer may exceed the 3.5 figure. Likewise, The License allows the distributor to deduct 4¢ per hundredweight for each 1/10 of one percent butterfat content that the product of any producer falls under the 3.5 percent figure. Thus, Farmer X, who theoretically requires $1.46 per hundredweight for his milk in the above example, would receive 20¢ less, or only $1.26 provided his milk tests only 3.0 percent butterfat, being .5 of one percent below the prescribed mean content; while he might receive $1.66 per hundredweight if his milk test would show a 4.0 percent butterfat content.

The second adjustment, as provided for in The License is that based upon the distance which any producer is located from the City Hall of the City of Chicago. An arbitrary ring of a 70-mile radius is drawn about said City Hall. Any farmer located within the circle thus described suffers no deduction whatsoever from the price he is paid. A farmer 60 miles from the City Hall is thus paid the same price for his milk as the farmer who is 10 miles outside of the City of Chicago. However, a recognition of the increased cost of hauling milk is partially made in the case of farmers situated beyond the 70-mile radius. It is provided that deductions may be made by distributors purchasing from such

distant producers at the rate of one cent for each ten miles in excess of 70 miles, but not to exceed the 100 mile zone, and one cent for every 15 miles in excess of 100 miles. Thus a distributor purchasing from a producer situated 50 miles from the City Hall would be entitled to make no reduction, and could make none if purchasing from a producer situated 70 miles from the City Hall, but a distributor purchasing from a producer who is located 90 miles from the City of Chicago may deduct two cents per hundredweight from the milk check paid the producer, and one purchasing from a producer situated 115 miles from the City of Chicago may deduct 4¢; 145 miles, 6¢, and so on.

Affiant has made a study of prevailing railroad rates for the shipment of milk from various points within 200 miles from the City of Chicago, and is acquainted with the cost of hauling milk by truck. Affiant states the fact to be that the deduction permitted by this Section of The License is less than one-sixth the actual cost for average transportation and hauling of milk on hauls of more than 100 miles, and is even more disproportionate on hauls of less than 100 miles. By the grossly inadequate deduction permitted by the terms of The License it is made more economical for the distributor to buy from producers situated near the City Hall. It is the opinion of the affiant, that 80 percent of the members of the Pure Milk Association, regularly shipping to the City of Chicago, are located within the 70-mile radius, and affiant states the fact to be that distributors not purchasing from the Pure Milk Association are obliged to go great distances, often in excess of 125 miles, in order to secure a supply of milk.

A further deduction is one taken from the check of the producers to support the operation, maintenance and administration of The License. This deduction is prescribed in The License as one cent per hundredweight. However, in the case of producers who are non-members of the Pure Milk Association, it is provided that another deduction of three cents may be made. By this provision of The License, non-members of the Pure Milk Association are required to pay a similar sum to the Market Administrator that Pure Milk Members pay to support their Association. Thus, the burden of Pure Milk Association membership is cast upon producers who are unwilling to become Pure Milk Association members. Affiant has made due and careful investigation and finds that the Market Administrator of the Chicago Sales Area has rendered no benefits whatsoever to non-members of the Pure Milk Association which could authorize the deduction of the additional 3¢.

The final and most important of all deductions and adjustments as made in the cost of milk is that dependent on what is called "the base and surplus system." The base and surplus system, as it has been in effect in this market for five years last past, has two principal purposes. The expressed purpose is to level or iron out milk production for the various seasons of the year. The second purpose is to decrease the production of milk by making it unprofitable for any given producer to produce an amount in excess of what is denominated as his "base", as will be later explained. Under The License, which adopts the base and surplus system, each producer is assigned an arbitrary figure, denominated as a "base". This base consists of a certain number of pounds

which is allotted to that producer as the amount of his production which may be sold by him at the blended price determined as aforesaid. For any amount that the farmer may produce in excess thereof, he is paid another and smaller price, which is, by the terms of The License, the same as that of Class III milk, or approximately 89¢ per hundredweight. Thus, in the example above taken, a producer would be paid $1.46 (less deductions for butterfat, mileage, and administrative expenses) for milk up to 90 percent of his base figure delivered by him during the month, and that of Class III, or 89¢, for milk delivered by him in excess of 90 percent of the base assigned to him. (The License also provides that no producer may get credit for more than 90 percent of his assigned base.) Thus, supposing Producers A, B and C are all assigned bases of 1,000 pounds. If Producer A would deliver 500 pounds, he would be paid at the rate of $1.46 in our example, for each 100 pounds by him delivered. If Producer B would deliver 1,000 pounds, he would be paid at the rate of $1.46 per hundredweight for 900 pounds of his milk, and 89¢ per hundredweight for 100 pounds. If Producer C would deliver 2,000 pounds he would be paid at the rate of $1.46 per hundredweight for 900 pounds and at the rate of 89¢ per hundredweight for 1100 pounds, 100 pounds being the difference between his assigned base and his delivered base, and 1,000 pounds being excess delivered by him over his assigned base.

Rules for the establishment of bases are set forth in Exhibit B of The License. In Exhibit B the bases assigned by the Pure Milk Association are adopted for members thereof, and it is provided that non-members be assigned bases by the Market Administrator, which shall be equitable therewith. No other restriction or limitation is placed upon the power of the Market Administrator in the exercise of his arbitrary power to give any producer any base which he may elect. Affiant is familiar with the methods adopted by the Pure Milk Association to assign bases to members, and upon such knowledge states the fact to be that the Pure Milk Association originally assigned its members as their base the average production by them during the three lowest production months in the year.

PART II.

WHAT INDIVIDUAL PLAINTIFFS WOULD RECEIVE UNDER LICENSE.

1. For the month of February the average hundredweight of milk of 3.5 butterfat content sold by the Individual Plaintiffs to the Plaintiff Association would have brought a price of $1.31 if the parties would have complied with the terms of The License. The computation is as follows:

Blended price as announced by Frank C. Baker: $1.57 per cwt.
Price for Class III milk as announced by Frank C. Baker: $ .89 per cwt.
Total deliveries to Plaintiff Association: 784,850 lbs.
Delivered base milk (bases assigned by Frank C. Baker): 597,364 lbs.
Surplus milk received: 187,486 lbs.

(cwt.) 5973.64 x $1.57 = $9,378.6148
(cwt.) 1874.86 x $ .89 = $1,668.6254

$11,047.24 Value of all milk received.

$11,047.24 ÷ 7848.5 (cwt) = $1.40
$1.40 - $.05 (mileage adjustment) = $1.35
$1.35 - $.04 (Market Administrator's check-off) = $1.31

2. For the month of March the average hundredweight of milk of 3.5 butterfat content sold by the Individual Plaintiffs to the Plaintiff Association would have brought a price of $1.37 if the parties would have complied with the terms of The License. The computation is as follows:

Blended price as announced by Frank C. Baker: $1.59 per cwt.
Price for Class III milk as announced by Frank C. Baker: .86 per cwt
Total deliveries to Plaintiff Association: 883,310 lbs.
Delivered base milk (bases assigned by Frank C. Baker): 661,035 lbs.
Surplus milk received 222,275 lbs.

(cwt) 6610.35 x $1.59 = $10,931.8550
(cwt) 2222.75 x $ .86 = $ 1,911.5650

$12,843.42 Value of all milk received

$12,843.42 ÷ 8833.10 (cwt) = $1.46
$1.46 - $.05 (mileage adjustment) =$1.41
$1.41 - $.04 (Market Administrator's check-off) = $1.37

3. For the month of April the average hundredweight of milk of 3.5 butterfat content sold by the Individual Plaintiffs to the Plaintiff Association would have brought a price of $1.37 if the parties would have complied with the terms of The License. The computation is as follows:

Blended price as announced by Frank C. Baker: $1.60 per cwt
Price for Class III milk as announced by Frank C. Baker: $ .78 per cwt
Total deliveries to Plaintiff Association: 772,035 lbs.
Delivered base milk (bases assigned by Frank C.Baker): 639,711 lbs.
Surplus milk received: 132,324 lbs.

(cwt) 6397.11 x $1.60 = $10,235.38
(cwt) 1323.24 x $ .78 = $ 1,032.13
$11,267.51 Value of all milk received.

$11,267.51 ÷ 7720.35 (cwt) = $1.46
$1.46 - $.05 (mileage adjustment) = $1.41
$1.41 - $.04 (Market Administrator's check-off) = $1.37

4. For the month of May the average hundredweight of milk of 3.5 butterfat content sold by the Individual Plaintiffs to the Plaintiff Association would have brought a price of $1.42 if the parties would have complied with the terms of the License. The computation is as follows:

Blended price as announced by Frank C. Baker:	$1.68 per cwt.
Price for Class III milk as announced by Frank C. Baker:	$ .81 per cwt.
Total deliveries to Plaintiff Association:	801,000 lbs.
Delivered base milk (bases assigned by Frank C. Baker):	688,851 lbs.
Surplus milk received:	112,149 lbs.

(cwt) 6888.51 x $1.63 = $11,228.27
(cwt) 1121.42 x $ .81 = $ 908.41

$12,136.68 Value of all milk received.

$12,136.68 ÷ 8010.00 (cwt) = $1.51
$1.51 - $.05 (mileage adjustment) = $1.46
$1.46 - $.04 (Market Administrator's check-off) = $1.42

5. For the month of June the average hundredweight of milk of 3.5 butterfat content sold by the Individual Plaintiffs to the Plaintiff Association would have brought a price of $1.61 if the parties would have complied with the terms of The License. The computation is as follows:

Blended price as announced by Frank C. Baker:	$1.84 per cwt.
Price for Class III milk as announced by Frank C. Baker:	$ .89 per cwt.
Total deliveries to Plaintiff Association:	781,000 lbs.
Delivered base milk (bases assigned by Frank C. Baker):	666,630 lbs.
Surplus milk received:	114,370 lbs.

(cwt) 6666.30 x $1.84 = $12,265.99
(cwt) 1143.70 x $ .89 = $ 1,017.90

$13,283.89 Value of all milk received.

$13,283.89 ÷ 7810.00 (cwt) = $1.70
$1.70 - $.05 (mileage adjustment) = $1.65
$1.65 - $.04 (Market Administrator's check-off) = $1.61

6. Therefore, if the Individual Plaintiffs were paid for their milk according to and in conformity with the terms of The License they would, since the effective date thereof, have received an average price of $1.42 per hundredweight for their milk.

$1.31	February
$1.37	March
$1.37	April
$1.42	May
$1.61	June
$7.08	

$7.08 ÷ 5 = $1.42

PART III

WHAT PLAINTIFF ASSOCIATION WOULD HAVE TO PAY FOR ITS MILK UNDER LICENSE.

The entire output of the COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, the Plaintiff Association, is now and has since the effective date of The License, been sold to MEADOWMOOR DAIRIES, INC., which distributes milk in the city of Chicago. According to the reports of MEADOWMOOR DAIRIES, INC., as returned to Market Administrator FRANK C. BAKER, all of the milk that MEADOWMOOR DAIRIES, INC., has received from the Plaintiff Association since the effective date of The License has been ultimately consumed as whole milk. Therefore, under the terms of The License, the Plaintiff Association would be compelled to pay for all milk received at Class I prices. For the months of February, March, April and May, Class I milk was priced at $1.75 per hundredweight by The License; for the month of June, The License price for Class I milk was $2.00 per hundredweight; and for the month of July the price of Class I milk was raised to $2.25 per hundredweight. The only deduction that the Association would be permitted to make would be the mileage adjustment of 5¢, due to the location of the Individual Plaintiffs at distances of approximately 125 miles from the City Hall of the city of Chicago. Thus the cost to the Plaintiff Association would have been $1.70 per hundredweight for milk received by it during the months of February, March, April and May, $1.95 per hundred weight for milk received by it during the month of June, and $2.20 per hundredweight for milk received by it during the month of July, 1934.

The difference between these figures and the price that would have been received by the Individual Plaintiffs during this period set forth in Part II of this Affidavit, is required by the terms of The License as explained in Part I hereof, to be paid into the Equalization Pool maintained by Frank C. Baker. Therefore, for the month of February, the Plaintiff Association would have been forced to pay into the Equalization Pool the sum of 38¢ per hundredweight, 33¢ per hundredweight for the months of March and April, 28¢ per hundredweight for the month of May, and 34¢ per hundredweight for the month of June. Thus, by the last of June, the Plaintiff Association, if it had conformed to The License, would be then indebted to the Equalization Pool in the approximate sum of $13,421.76.

Further, affiant sayeth not.

NORMAN R. DIETZ (SIGNED)

Subscribed and sworn to before me,
Lorraine Reiner, a Notary Public,
this 18th day of July, 1934.

A NOTARY PUBLIC

My Commission Expires May 22, 1937.

E X H I B I T F

THIS AGREEMENT made and entered into at Chicago, Illinois, this 3rd day of May, A. D. 1933, by and between COLUMBUS MILK PRODUCERS COOPERATIVE ASSOCIATION, a Corporation, with its principal office in Astico, Wisconsin, hereinafter designated as party of the first part, and MEADOWMOOR DAIRIES, INC., a Corporation, with its principal office of Chicago, Illinois, hereinafter designated as party of the second part;

W I T N E S S E T H:

THAT WHEREAS, the party of the first part is now engaged in the purchase of milk from farmers which it is desirous of reselling to the second party, and

WHEREAS, the party of the second part is desirous of purchasing such milk and cream and other dairy products,

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00) each to the other in hand paid, and other good and valuable considerations, the receipt whereof is hereby acknowledged, it is agreed between said parties as follows; to-wit; -

FIRST: The party of the first part agrees to sell and deliver to the party of the second part so much milk and cream as they will use and sell in the daily operation of their wholesale and retail dairy business established in the City of Chicago, State of Illinois, known as 1334-1342 South Peoria Street, but it is expressly understood and agreed that the party of the first part is not bound to deliver more milk or cream than its factory output.

SECOND: It is further agreed and understood that the milk and cream furnished under this contract shall be of a quality required for Chicago bottling purposes and shall comply with the ordinances of the City of Chicago, and the rules of the Commissioner of Health of the City of Chicago, and with the rules and regulations of the party of the second part. All milk shall be drawn from healthy cows free from disease. Said cows shall have been tested and shall comply with the requirements of the Chicago Health Department.

THIRD: Shipments under this contract shall begin on the 3rd day of May, A. D. 1933, or as soon thereafter as the party of the second part may designate. It is agreed that the party of the second part will give three (3) days notice to the party of the first part when they are to begin shipping. It is also agreed that the party of the second part will give twenty-four (24) hours notice to the party of the first part to hold back shipments, in the event the party of the second part gets over-stocked or over-supplied with milk, cream or other dairy products.

All containers, when shipped in cans shall be furnished by the first party without charge or cost to the party of the second part.

FOURTH: The party of the second part shall pay to the party of the first part for each one hundred pounds of fluid milk with a base test of 3.5% butterfat content the average publicly quoted current prices as paid by the following condensaries; Carnation Company at Jefferson, Wisconsin; Armour & Company Condensary at Stoughton, Wisconsin, and the Dry Milk Company at Columbus, Wisconsin. Said average price shall be arrived at by adding the publicly quoted prices as paid by each of the said condensaries above, dividing said sum by three (3). To this average price shall be added the sum of Forty (40¢) cents per hundredweight, for factory operation and inspection. The price of said milk arrived at AS AFORESAID IS to be "F.O.B." tank car or tank truck at Astico, Wisconsin.

The price on cream shall be the current quoted price prevailing in Chicago, Illinois, plus the differentials to be arrived at by the parties to this contract on the 10th and 25th days of each month.

FIFTH: Payment for the milk and cream by the party of the second part to the party of the first part, shall be on the 10th and 25th days of each calendar month, as hereinafter set forth, for milk shipped and accepted and properly invoiced. The payment to be made on the 10th day of each calendar month shall be for milk and cream shipped during the period from the 1st to the 15th day inclusive of the preceding month, and the payment to be made on the 25th day of each calendar month shall be for milk and cream shipped during the period from the 16th day to the 31st day inclusive of the preceding month.

SIXTH: In the event that the milk shipped by the party of the first part shall be in excess of or below the 3.5% butterfat content, the same shall be paid for in direct ratio to said established 3.5% butterfat content, which is hereby made standard. In figuring the ratio the factory operation cost of forty (40¢) cents per hundredweight, as hereinbefore set forth shall be excluded. The party of the second part agrees that the ratio of sweet cream ordered by it from the party of the first part shall never be in excess of thirty (30%) percent of the volume of milk ordered. This is to be taken on the basis of the fat in the respective items. If during any fifteen (15) day period this volume of sweet cream fat exceeds the milk fat volume, the difference in poundage of fat is to be adjusted in the ordering of cream in the following fifteen (15) day period.

SEVENTH: The party of the second part shall be relieved from its obligation to take any milk hereunder unless all such milk is delivered pursuant hereto, and pursuant to the rules, laws, ordinances, and regulations which now exist or which may hereafter be enacted or promulgated by any State or Federal government or any federal bodies.

EIGHTH: It is agreed by and between the parties hereto that in the event of the failure to perform by the party of the first part, that

damages might be difficult to ascertain, the parties hereto expressly agree that in the event that the party of the first part fails or neglects to perform any of the covenants of this contract by them to be kept and performed, or shall fail to ship milk and cream promptly as herein provided for, or for any other reason whatsoever, save by the act of God, that the party of the second part shall retain all of the monies due to the said party of the first part for unpaid milk and cream due at the date of such failure to perform.

NINTH: This contract shall be for a period of One (1) year from the date hereof, and the party of the second part is hereby given an option to renew said contract for an additional period of One (1) year upon the same terms and conditions. This contract shall be binding upon the successors and assigns of both of the parties hereto.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its President and attested by its Secretary, and its corporate seal hereto affixed, and the party of the second part has caused these presents to be signed by its President and attested by its Secretary, and its corporate seal hereto affixed, all on the day and year first above written.

COLUMBUS MILK PRODUCERS CO-OP ASS'N.

BY: _____
President

ATTEST:

_____
Secretary

MEADOWMOOR DAIRIES, INC.

BY: _____
President

ATTEST:

_____
Secretary

E X H I B I T G

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

AFFIDAVIT OF GUY H. ADDISON

GUY H. ADDISON, being first duly sworn upon his oath deposes and says:

1. Affiant's name is GUY H. ADDISON; he is a resident of the town of Astico in the state of Wisconsin.

2. Affiant is now and for more than one year last past has been continuously connected with the plaintiff, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, in the capacity of Manager thereof, and is familiar with the books, records and documents of the said plaintiff, and of the conduct of the said plaintiff's business.

3. Affiant is familiar with the average publicly quoted price as paid by the following condensaries: Carnation Company at Jefferson, Wisconsin; Armour & Company Condensary at Stoughton, Wisconsin, and the Dry Milk Company at Columbus, Wisconsin, for the months of February, March, April, May and June. Affiant further states that the average price quoted by the said condensaries for the five months hereinbefore named, averaged less than $1.07 per hundredweight for milk of 3.5% butterfat content.

4. Affiant says that under the Fourth Paragraph of the contract between the COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION and MEADOW-MOOR DAIRIES, INC., of date of May 3rd, 1933, in this Bill of Complaint referred to as "Exhibit F", the plaintiff Association, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, a corporation, has therefore been compelled to sell and deliver to MEADOWMOOR DAIRIES, INC., milk at an average price of less than $1.47 per hundredweight since the effective date of The License.

Further affiant sayeth not.

GUY H. ADDISON (SIGNED)

Subscribed and sworn to before me
this 18th day of July, 1934.

(SEAL) LORRAINE REINER (SIGNED)

A NOTARY PUBLIC

My Commission Expires May 22, 1937.

E X H I B I T H

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

AFFIDAVIT OF GUY H. ADDISON

GUY H. ADDISON, being first duly sworn upon his oath deposes and says:

1. Affiant's name is GUY H. ADDISON; he is a resident of the town of Astico in the state of Wisconsin.

2. Affiant is now and for more than one year last past has been continuously connected with the plaintiff, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, in the capacity of Manager thereof, and is familiar with the books, records and documents of the said plaintiff, and of the conduct of the said plaintiff's business; affiant is further familiar with the terms, provisions and conditions of The License referred to in the Bill of Complaint herein.

3. Paragraph 4, Section A of Exhibit A to The License requires as follows:

> "On or before the 7th day of each delivery period, each distributor to whom milk or cream was delivered during the preceding delivery period by (1) producers (who are not also distributors) and/or (2) distributors (other than those who operate only stores or other similar establishments) shall report to the Market Administrator with respect to milk or cream delivered during such delivery period in the manner prescribed by the Market Administrator:
>
> * * * * *
>
> * * * * *
>
> "(3) The quantities of milk delivered which were sold, used or distributed by him as Class I, Class II and Class III milk respectively, and
>
> * * * * * * "

Plaintiff Association sells all milk by it handled to MEADOWMOOR DAIRIES,

INC., which said corporation in turn sells the said milk to retailers thereof. Plaintiff Association is therefore unable to report to the Market Administrator the ultimate use of the said milk sold by it for the reason that only the retailer thereof and/or MEADOWMOOR DAIRIES, INC, have knowledge of said ultimate use.

4. The larger distributors in the Chicago Sales Area, regulated under The License, to wit, BORDEN FARM PRODUCTS COMPANY OF ILLINOIS, a corporation, BOWMAN DAIRY COMPANY, a corporation, SIDNEY WANZER & SONS, a corporation, and WIELAND DAIRY COMPANY, a corporation, sell all milk handled by them directly to the consumer thereof and are able to report the ultimate use thereof.

5. Said requirement aforesaid is, therefore, as to this plaintiff, onerous, unreasonable and impossible.

Further affiant sayeth not.

GUY H. ADDISON (SIGNED)

Subscribed and sworn to before me
this 18th day of July, 1934.

(SEAL) LORRAINE REINER (SIGNED)

A NOTARY PUBLIC

My Commission Expires May 22, 1937.

EXHIBIT I

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF GUY H. ADDISON

GUY H. ADDISON, being first duly sworn upon his oath deposes and says:

1. Affiant's name is GUY H. ADDISON; he is a resident of the town of Astico in the state of Wisconsin.

2. Affiant is now and for more than one year last past has been continuously connected with the plaintiff, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, in the capacity of Manager thereof, and is familiar with the books, records and documents of the said plaintiff, and of the conduct of the said plaintiff's business; affiant is further familiar with the terms, provisions and conditions of The License referred to in the Bill of Complaint herein.

3. Section 8 of Exhibit B to The License provides as follows:

> "Any producer who shall voluntarily cease to market milk for ultimate consumption as whole milk in the Chicago Sales Area for a period of more than forty-five consecutive days, shall forfeit his base. In the event that he resumes production thereafter, he shall be treated, for the purpose of these rules, as if he were a new producer."

Since the effective date of The License and for some time last past, the Chicago Department of Health has been arbitrarily suspending producers from the Chicago market for periods ranging from two months to six months, although all requirements customarily enacted by the said Health Department were complied with by said producers. This suspension has been accomplished by the Department of Health of the City of Chicago under the guise of a certain regulation of the City of Chicago which prohibits re-inspections beyond a radius of 100 miles from the City Hall of the City of Chicago. Thus, numbers of producers who are located beyond the said radius have been caused to cease marketing milk for ultimate consumption in the Chicago Sales Area for a period of more than forty-five consecutive days, because they have been unable to get Chicago City Health inspection. Under the construction of the provisions of The License hereinabove set forth, such producers are caused to forfeit their base and are treated thereafter as new producers.

4. As new producers, it is necessary that they obtain special license from the Market Administrator before the Plaintiff Association may purchase their products. This is in accordance with the provisions of Section G of Exhibit A to The License.

5. Certain large dairies, regulated by the said license, to wit, BORDEN FARM PRODUCTS COMPANY OF ILLINOIS, a corporation, BOWMAN DAIRY COMPANY, a corporation, SIDNEY WANZER & SONS, a corporation, and WIELAND DAIRY COMPANY, a corporation, however, are not so subjected and endangered to a diminution and destruction of their source of supply of milk, for the reason that said dairies purchase their supply of milk from producers who are members of the Pure Milk Association, and who are situated within 100 miles of the City of Chicago, and who, therefore, are able to secure Chicago City Health inspection.

Further affiant sayeth not.

GUY H. ADDISON (SIGNED)

Subscribed and sworn to before me
this 18th day of July, 1934.

(SEAL) LORRAINE REINER (SIGNED)

A NOTARY PUBLIC

My Commission Expires May 22, 1937.

E X H I B I T J

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

AFFIDAVIT OF GUY H. ADDISON

GUY H. ADDISON, being first duly sworn upon his oath deposes and says:

1. Affiant's name is GUY H. ADDISON; he is a resident of the town of Astico in the state of Wisconsin.

2. Affiant is now and for more than one year last past has been continuously connected with the plaintiff, COLUMBUS MILK PRODUCERS CO-OPERATIVE ASSOCIATION, in the capacity of Manager thereof, and is familiar with the books, records and documents of the said plaintiff, and with the conduct of the said plaintiff's business; affiant is further familiar with the terms, provisions and conditions of The License referred to in the Bill of Complaint herein.

3. None of the Individual Plaintiffs herein who sell milk to Plaintiff Association are members of the Pure Milk Association.

4. Paragraph 2 of Section D of Exhibit B to The License provides as follows:

> "Each distributor shall, in addition, deduct from the payments to be made by him pursuant to section A in regard to all milk delivered to him by producers who are not members of the Pure Milk Association, hereinafter called the "Association", an amount equal to the deductions authorized by the members of the Association for furnishing benefits to such members, which deduction from nonmembers, however, shall in no event exceed three cents per hundredweight. Such deduction shall be paid over to the Market Administrator on or before the 18th day following the last day of each delivery period."

5. Affiant further says that all benefits received by members of the Pure Milk Association are rendered by the Plaintiff Association to the Individual Plaintiffs herein, and the Individual Plaintiffs, by said

requirements of The License, are required to pay the Market Administrator for the said benefits; that the members of the Pure Milk Association are, by the terms of The License, exempted therefrom; that certain large dairies, to wit, BORDEN FARM PRODUCTS COMPANY OF ILLINOIS, a corporation, BOWMAN DAIRY COMPANY, a corporation, SIDNEY WANZER & SONS, a corporation, and WIELAND DAIRY COMPANY, a corporation, who buy their supply of milk exclusively from members of the Pure Milk Association are not therefore indirectly compelled to bear this additional cost of 3¢ per hundredweight upon milk purchased by them.

Further affiant sayeth not.

GUY H. ADDISON (SIGNED)

Subscribed and sworn to before me
this 18th day of July, 1934.

(SEAL) LORRAINE REINER (SIGNED)

A NOTARY PUBLIC

My Commission Expires May 22, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

COLUMBUS MILK PRODUCERS COOPERATIVE
ASSOCIATION, et al, v.
HENRY A. WALLACE, et al

IN EQUITY NO. 13985

DISTRICT COURT OF THE UNITED STATES NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COLUMBUS MILK PRODUCERS COOPERATIVE ASSOCIATION, et al,	)	
Plaintiffs,	)	IN EQUITY
v.	)	NO. 13985
HENRY A. WALLACE, et al,	)	
Defendants.	)	

BRIEF OF DEFENDANTS

I N D E X

DISTRICT COURT OF THE UNITED STATES NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COLUMBUS MILK PRODUCERS COOPERATIVE ASSOCIATION, et al, Plaintiffs,	)	IN EQUITY
v.	)	NO. 13985
HENRY A. WALLACE, et al, Defendants.	)	

BRIEF OF DEFENDANTS

STATEMENT OF CASE

This case is now before this court upon a final hearing upon the merits. The plaintiffs are seeking a permanent injunction restraining the defendants from enforcing the Chicago Milk License. The defendants, Secretary Wallace and United States Attorney Green, are seeking a permanent injunction restraining the plaintiffs from violating the terms and conditions of the Chicago Milk License.

All the parties to this cause have entered into and signed a written stipulation:

> "That said cause shall be heard and decided upon the issued raised by the pleadings heretofore filed herein; and that in order to expedite the trial of said issues, the facts and evidence upon which the court shall make its decision shall be such only as are contained in this stipulation and facts of which the court may take judicial notice; provided, however, that each of the parties expressly reserves the right to contend that any facts or evidence recited in this stipulation are not material or relevant to the issues herein; and expressly reserves the complete and full right to appellate review, as provided by law, of any decree which may be entered in this court upon this stipulation."

The Plaintiffs

The original plaintiffs are the Columbus Milk Producers Cooperative Association (a corporation organized under the laws of the State of Wisconsin) and one hundred twenty individuals who are members of the plaintiff Association. The Intervener is Meadowmoor Dairies, Inc., which has intervened in this cause as a party plaintiff. It is a corporation organized under the laws of the State of Illinois and has its place of business in the City of Chicago in said State.

The Defendants

The defendants are Henry A. Wallace, Secretary of Agriculture, Homer J. Cummings, Attorney General of the United States of America, Dwight H. Green, United States Attorney for the Northern District of Illinois, Eastern Division, and Frank C. Baker, Market Administrator for the Chicago Sales Area under the Chicago License for Milk.

The Pleadings

We believe it unnecessary to analyse or summarize in detail the various pleadings. In view of the stipulation, it will be helpful to the court, however, to point out that the pleadings upon which the issues in this case are to be tried are the following: (1) plaintiffs' first amended bill of complaint filed by the original plaintiffs; (2) the supplemental bill of complaint also filed by the original plaintiffs; (3) the bill of intervention filed by the Intervener (Meadowmoor Dairies, Inc.); (4) the answer of the defendants to the first amended bill of complaint; (5) the answer of the defendants to the supplemental bill of complaint; (6) the answer of the defendants to the bill of intervention; (7) the counterclaims (the equivalent of a cross-bill under the equity rules) of the defendants Wallace and Green contained in the answer to the supplemental bill of complaint and in the answer to the bill of intervention; (in these counterclaims the defendants Wallace and Green pray for permanent injunctions restraining the plaintiff Association and the Intervener from violating the Chicago Milk License); and (8) the separate answers of the original plaintiffs and the Intervener to these counterclaims .

The Evidence

By this written stipulation, the parties have entered into a complete stipulation on the evidence to be submitted to this court for the determination of the issues raised by the pleadings. The stipulation is lengthy and unavoidably detailed. Before outlining the evidence in the stipulation, we believe it will be most helpful to the court, and the court will more readily perceive the relevancy of the evidence contained in the stipulation, if we first indicate very briefly, in a summary and broad fashion, what are the issues in the case. The basic issues in this case presented to this court, broadly stated, are (1) whether the Chicago Milk License is legally valid and (2) whether it is applicable to the plaintiff Association and the Intervener. The individual plaintiffs are not licensees under the Chicago Milk License. We will at this point briefly state the facts stipulated pertaining to (1) the relationships of the individual plaintiffs to the plaintiff Association; (2) the contractual relationship of the plaintiff Association to the Intervener; (3) the facts pertaining to the transportation of all the milk produced by the individual plaintiffs from Wisconsin to the Chicago Sales Area and its consumption there; (4) the Chicago Milk License and the amendments thereto.

The individual plaintiffs are farmers residing in Wisconsin; they are each members of and stockholders in the plaintiff Association; they produce milk on their farms, transport it to the plant of the plaintiff

Association located in the town of Astico, Wisconsin, and there sell it to the plaintiff Association. The legal relationships existing between the individual plaintiffs and the plaintiff Association are governed by certain contracts which were entered into prior to the passage of the Agricultural Adjustment Act and which are now in effect. In accordance with the terms of these contracts, each of the individual plaintiffs receives from the plaintiff Association the average price received by the association for milk of a similar quality sold by it during the same period, less deductions for the operating expenses of the plaintiff Association.

Prior to the enactment of the Agricultural Adjustment Act, the plaintiff Association entered into a contract with the Intervener, by the terms of which the plaintiff Association obligated itself to sell, to the Intervener all the milk which it received from the individual plaintiffs. This contract will not expire until May 2, 1935. By its terms the plaintiff Association is to receive from the Intervener a price equal to the average current price paid for milk by three Wisconsin condenseries, plus forty cents (40¢) per hundredweight.

The Intervener transports the milk purchased by it from the plaintiff Association from Astico, Wisconsin, to the plant of the Intervener in Chicago, where all of said milk is sold by the Intervener and consumed in fluid form as Class I milk as defined in the License.

Both the plaintiff Association and the Intervener are distributors, as defined in the License, and are required by the License to pay for milk purchased by them in accordance with its terms. Neither the plaintiff Association nor the Intervener has complied with provisions of the License with respect to the purchase of milk by them. The price which the individual plaintiffs received from the plaintiff Association since the effective date of the License has, each month, been less than the price which they would have received had the plaintiff Association paid the individual plaintiffs for the milk which it purchased from them in accordance with the terms of the License.

The amendment to the Chicago Milk License effective August 22, 1934, provides that "No distributor shall sell milk to or purchase milk from another distributor for Class I purposes at less than the Class I price. * * * If the selling distributor pasteurizes, bottles, or otherwise processes or transports such milk which results in a service to the buying distributor, a reasonable charge and/or payment, as the case may be, shall be made therefor. Any contract or agreement entered into between one distributor and another distributor prior to the effective date of this License, covering the purchase and/or delivery of such milk, shall be deemed to be superseded by the terms and provisions of this License insofar as such contract or agreement is inconsistent with any provisions hereof." The effect of this amendment to the License was to supersede the contract between the plaintiff Association and the Intervener and to require the Intervener to pay for milk purchased by it from the plaintiff Association at the Class I price as specified in the License.

Differences Between This Case and The Case of Edgewater Dairy Company v. Wallace

The Chicago Milk License before the court in this case is the same License which was considered by this Court in the Edgewater case except that it has been amended in the following particulars:

By an amendment effective July 1, 1934, the Class I price for milk was increased from $2.00 per hundredweight to $2.25 per hundredweight.

By an amendment effective July 18, 1934, paragraph 3 of Part II of the License, which forbade the purchase of milk from a producer unless the producer authorized the purchasing distributor to make payments in accordance with the marketing plan provided in the License, was deleted.

By an amendment effective August 22, 1934, the provisions of which are discussed above.

In the Edgewater case, all of the milk sold by the plaintiffs was produced, processed and sold for consumption in Illinois. In the case at bar all of the milk produced by the individual plaintiffs and all of the milk sold by the plaintiff Association is transported from the State of Wisconsin into the State of Illinois and is there sold by the Intervener. More than seventy-six (76) percent of all the milk sold by the Intervener in the City of Chicago is purchased by it from other distributors located in the States of Wisconsin and Indiana and is transported by it. from those States into the State of Illinois where it is sold for consumption in fluid form.

THE ISSUES IN THIS CASE

There has been a complete stipulation of the facts in this case, and hence the only issues involved are questions of law.

Interstate Commerce

1. We shall show that upon the stipulated facts both the plaintiff Association and the Intervener are actually each engaged in interstate commerce.

2. Moreover, the entire Chicago Sales Area with respect to milk is in the current of interstate commerce.

Constitutional Questions

3. Both the Act and the Chicago Milk License issued pursuant thereto are proper and valid exercises of the federal power to regulate interstate commerce.

4. Neither the Act nor the Chicago Milk License violates the due process clause of the Fifth Amendment.

5. Section 8 (3) of the Act constitutes a proper delegation of legislative authority.

6. The objection that the Act "taxes" one group for the benefit of another, is without merit.

7. The contention that the Illinois statute, under which the Chicago Milk Association was organized, is unconstitutional is utterly immaterial in this case and is without merit.

A multitude of constitutional objections were stated by the plaintiffs in their pleadings which have not been discussed in their brief; we assume that these have been abandoned, and hence they will not be discussed in our brief.

I.

INTERSTATE COMMERCE

Preliminary Statement

1. We shall first state our position with respect to the decision of this court in the case of Edgewater Dairy Company v. Wallce, holding that the License is invalid because it regulates the production of milk, and hence can not be interstate commerce.

2. We shall then establish that the Intervener and the plaintiff Association are each actually engaged in interstate commerce and are therefore subject to Federal regulation.

3. Finally, we shall show that all of the transactions in the marketing of milk in the Chicago Sales Area are transactions in interstate commerce which are subject to Federal regulation, (a) because interstate transactions are so intermingled with intrastate transactions that the effective regulation of the former requires regulation of the latter, and (b) because unstabilized conditions in local milk markets directly affect and burden interstate commerce in milk and its products.

1.

Edgewater decision - Government's position with respect thereto.

Because this court has held that the Chicago Milk License regulates the production of milk, that production is not interstate commerce and that therefore the Federal government had no power under the Commerce Clause to issue the Chicago Milk License, we shall address ourselves first to that proposition. If the decision of this court in the Edgewater case is correct, it would seem logically to follow that the Chicago Milk License is equally invalid as applied to the plaintiff Association and to the Intervener in the case at bar. In the Edgewater case, counsel for the plaintiffs did not urge that the License was invalid as a regulation

of production and the defendants had no opportunity to assert their position upon this proposition. We here wish to point out why we consider that the decision of this Court in the Edgewater case was in error.

In reaching its conclusion that the Chicago License for milk is a regulation of production of milk rather than of commerce among the several states, this Court in its memorandum opinion stated that the License had three principal purposes: (1) "To fix the minimum price at which producers of milk may sell their product," (2) "to limit the production of milk by producers thereof by means of assigning to them so-called bases," and (3) "to charge the cost of administration under the License to the producers."

Because there is nothing contained in the memorandum opinion of this Court in the Edgewater case to indicate upon which of these three principles this Court based its conclusion that the Chicago Milk License was designed to control production, we shall discuss all three of the principles mentioned in the memorandum opinion.

1. We believe that an accurate analysis of the License will indicate that instead of three principal purposes, the License has as a matter of fact but one single purpose: to increase the income of dairy farmers by fixing the price which distributors are to pay them for milk, and that all of the provisions of the License are directed toward that end. That the fixing of the price which dealers are required to pay farmers for products which move in the current of interstate commerce is a proper exercise of the commerce power is apparent from the decision of the Supreme Court in Lemke v. Farmers Grain Co., 258 U.S. 50 (1922), which was discussed in the brief filed on behalf of the defendants in the Edgewater case and which will subsequently be more fully analyzed in this brief. It is obvious that the Supreme Court must have been aware in deciding the Lemke case, that fixing prices to the farmer would and does have some effect upon production; yet this fact was not deemed of sufficient importance by the Supreme Court to deserve comment.

There are many other instances in which Federal regulations of interstate commerce have obviously affected production and in which the regulations have nevertheless been sustained. In U. S. v. Johnston, 232 Fed. 970 (D.C.N.D. N.Y. 1916), a statute which prohibited the transportation of prize fight films in interstate commerce was sustained. The effect of the enforcement of this statute upon the production of such films is obvious. Similarly, statutes prohibiting the interstate transportation of lottery tickets and intoxicating liquors have been sustained in spite of their readily apparent effect upon production. The Lottery Case, 188 U.S. 321 (1903): Adams Express Co. v. Kentucky, 238 U. S. 190 (1915). The case of Stafford v. Wallace, 258 U. S. 495, (1922), deserves attention in this respect. That case upheld the Packers and Stockyards Act which regulated the business of commission merchants in the Chicago stockyards. Regarding the purpose of the statute involved and the end sought to be achieved, the court said, at page 514:

"The chief evil to be feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys."

Thus, it is clear that an attempt was being made to prevent undue influence upon the price and volume of trade in the packing industry. Certainly the operation of this statute must have affected production. If it prevented unduly and arbitrarily high prices to the consumer, it may well be assumed that the consumer purchased more meat than he would have had the price been very high. If it prevented the unduly and arbitrarily low prices to the shipper, it may well be assumed that the slaughter of cattle was maintained at a higher rate than it would have been had the price been lower.

These decisions clearly indicate that the mere fact that a regulation of interstate commerce to some degree affects production, will not, solely because of that fact, impair an otherwise valid regulation. We therefore respectfully submit that the price fixing provisions of the Chicago Milk License are not invalid because they may remotely affect milk production.

2. The second principle emphasized in the memorandum opinion in the Edgewater case is the base surplus plan provided in the License. It is apparent from the analysis of the License which immediately follows this discussion, that the base surplus plan is not designed to and does not limit the production of milk nor does it prohibit producers from selling as much milk as they please. It is simply a method by which farmers are encouraged to produce uniform quantities of milk throughout the season. In effect, the base surplus plan gives farmers who maintain their production at a uniform level a premium in the price paid to them for their milk. The desirability of encouraging uniform milk production throughout the year arises from the fact that there are seasonal variations in production. These seasonal variations make difficult the maintenance of a fixed price to the producer throughout the year, since the greatly diminished production of milk in the fall and winter months and the surplus milk production during the spring months which floods the marketwith milk would threaten the price structure fixed in the License. The base surplus plan is thus merely an incident to the price fixing provisions of the License (which, as we have shown, are a proper exercise of the commerce clause), and an aid in the effective maintenance and enforcement of the fixed producer price.

3. The third principle of the License adverted to by this court in its memorandum opinion in the Edgewater case is that the cost of administration of the License is charged to the producers. The memorandum opinion does not elaborate or explain how this provision for defraying administrative expenses affects production at all. The License provides that in making payments to producers distributors shall make certain deductions from the price, which producers are entitled to receive under the provisions of the License, and shall pay the money so deducted to the Market Administrator. As appears from the License, these deductions

are solely for the purpose of defraying all expenses which may be incurred in the administration of the License and in the rendition of specified services to producers. The charge, therefore, is not a revenue measure (as this term is accurately used with respect to an exercise of the taxing power) but an appropriate incident of what has been shown in the prior sections of this brief to be a permissible regulation of interstate commerce. It is apparent that the marketing plan provided for in the License for the regulation of interstate commerce in milk cannot be executed without expense. The Supreme Court has in a number of cases sustained assessments similar to that involved in the case at bar to be used in the payment of the expenses of administering a measure regulating interstate commerce and has carefully distinguished such assessments from revenue measures.

Head Money Cases, 112 U. S. 580 (1884).
Pure Oil Co. v. State of Minnesota, 248 U.S. 158 (1918).
Patapsco Guano Co. v. North Carolina Board of Agriculutre, 171 U. S. 345 (1898).

See also:

Veazie Bank v. Fenno, 8 Wall. 533 (1868).
Mountain Timber Co. v. State of Washington, 243 U. S. 219 (1917).
Noble State Bank v. Haskell, 219 U. S. 104 (1911).
Rhinehart v. State, 121 Tenn. 420, 117 S. W. 508 (1908).

The following analysis of the Chicago Milk License will further demonstrate that the sole purpose of the License is to fix the price to be paid to producers for milk sold by them and that all other provisions are designed to assist in the accomplishment of that purpose.

THE PROVISIONS OF THE LICENSE

The License is a long and complicated document. However, even a cursory examination of its provisions indicates that it is chiefly concerned with fixing the price which distributors shall pay to producers for the milk which they purchase. If the problem of marketing milk were a simple one, the entire License could probably have been expressed in a few paragraphs. Its length and the complexity of its provisions grow out of problems which were present in the dairy industry before the passage of the Act. As appears from the facts before the Court, two principal marketing problems in the dairy industry complicated the execution of the simple purpose of the License in fixing prices. These two problems are as follows:

1. All of the milk which distributors purchase from producers is not sold by them in the form of whole milk. Most distributors separate a portion of their milk and sell it as cream. Another portion is manufactured into butter, cheese, or other dairy products, and sold as such. (Milk manufactured into butter or other products is commonly referred to as "surplus" milk.) Milk sold for each of these three purposes is of exactly the same quality and is produced under precisely the same con-

ditions. However, a given quantity of milk realizes a higher price on the retail market when sold in the form of milk than when sold in the form of cream. Likewise the same quantity of milk sold in the form of cream realizes a higher price on the retail market than when manufactured into butter or cheese and sold as such. Thus one hundred pounds of milk of the same quality may net a distributor three different prices, depending upon the form in which it is sold. The highest price is realized for whole milk, a lower price for cream, and a still lower price for butter and other manufactured products.

By reason of the foregoing economic fact, a price regulation which established a flat producer price for milk, irrespective of the form in which it is sold by distributors, would place an unfair burden upon distributors. Few distributors know in advance the proportions of their total milk purchases which they will sell in the form of milk, cream, and butter, respectively. In addition, no two distributors sell the same portion of their total purchases in the form of milk, cream, and butter. Thus a flat producer price which might be fair and reasonable for one distributor would place entirely too high a milk cost upon another distributor who sold a larger part of his milk in the form of cream or butter.

For this reason, and in order to avoid discrimination among distributors, the first principle recognized by the License is that the price which each distributor shall pay for his milk should be determined by the form in which he ultimately disposes of it. Thus the License provides that three prices be paid by distributors:

> For whole milk: $2.25 per hundred-weight.
> For milk sold in the form of cream: a price determined by adding a specified differential to the price of butter on the Chicago Wholesale Market.
> For milk sold in the form of butter and other manufactured products; a price likewise based on a differential over the Chicago Butter Market, but less than the cream price.

2. The classified price plan, if uncoupled with a provision for equalizing payments to producers, would obviously discriminate among producers. Under the classified price plan, two producers who supply the same quality and quantity of milk to two different distributors might receive different prices for their milk because of the fact that their respective distributors make different uses of the milk which they purchase. Thus, if one producer supplies milk to a distributor who sells the bulk of his milk in the form of butter, such producer would receive only the low butter price for his entire production. Another producer, on the other hand, producing milk of the same quality but supplying it to a distributor who sells the bulk of his milk in the form of whole milk, would receive the high whole milk price for his entire production. If this situation were permitted to continue, producers would compete with each other to find the most lucrative outlet for their milk; in the course of such competition price wars and price-

cutting would invariably develop, so that it would become impossible to maintain a fixed producer price.

To avoid this result the License provides for a so-called "equalization pool", the entire purpose of which is to divide the high-value milk market in an equitable manner among all producers, and to require all producers to bear their fair share of "surplus" milk, or low-use-value milk on the market. The equalization pool does not disturb the first principle of the License above stated--that each distributor shall pay for milk on the basis of the use which he makes of it. It simply provides that the total dollar value of milk purchased by all distributors on the market shall be equitably apportioned among all producers on the market.

The License accomplishes the foregoing result in the following fashion: Distributors are not required to pay producers for milk purchased until the month following the month in which their purchases are made. On the 5th day of each month all distributors are obligated to file reports with the Market Administrator, appointed by the Secretary. Such reports state the disposition which each distributor has made of milk purchased by him during the preceding month. Thus, each distributor is required to report the quantities of milk sold by him during the preceding month in the form of whole milk (Class 1), cream (Class 2), or manufactured products (Class 3). The dollar value of the milk sold by each distributor is then computed in accordance with the prices specified in the License. This dollar value so computed represents the obligation of each distributor on account of his milk purchases. The obligation of each distributor to pay for milk becomes definite and fixed on the basis of this computation.

Having determined the amount of money which each distributor is obligated to pay for his purchases, the remaining problem is to determine how such payments shall be apportioned among producers in accordance with the principles of the "equalization pool" stated above. This is accomplished in the following manner: The aggregate dollar value of all milk purchased by all the distributors on the market is computed by totalling the obligations of individual distributors determined as above. Such total dollar value represents the amount of money which is to be divided among all producers in payment for their milk.

In determining how the total dollar value of milk purchased by distributors shall be apportioned among producers, a further marketing problem exists in the dairy industry which requires special consideration. There are marked seasonal variations in milk production, with a high production period during the Spring months when pasturage is abundant, followed by a correspondingly low production period during the Fall months. It therefore becomes desirable to encourage production at a uniform level throughout the year in order to avoid a breakdown in the price structure during the high production months when production, if unregulated, would be in excess of market needs. For this reason the License embodies the so-called "base-surplus" plan to provide an incentive to producers to keep their production at a uniform level throughout the year and to compensate them for making the necessary adjustment. Each producer in the market is assigned a so-called "base", which is simply a figure representing a fixed quantity of milk produced by him during the normally low production months.

No producer is prohibited from producing and selling milk in excess of his base. Such bases are merely used in determining what share of the total dollar value of all milk sold shall be paid to each producer. In addition, individual producers frequently do not produce an amount of milk equal to their respective bases. In such case the amount produced and sold is designated as such producers' "delivered base".

To determine how the total dollar value of all milk purchased by distributors is to be apportioned among producers, the Market Administrator makes the following computations: The total dollar value of all Class 1 and Class 2 milk sold in the market is divided by the total of the delivered bases of all producers in the market. This computation results in a "blended" price for base milk. Each distributor pays each producer this blended price for an amount of milk equal to the base of such producer. He pays the Class 3, or "surplus" price, for all milk delivered by such producer in excess of his base.

As a result of the foregoing method of payment, certain distributors in the market who sell more than the average amount of milk as cream or butter will be required to pay their producers more for milk than its use value to them. Conversely, other distributors who sell more than the average amount of milk as whole milk, will be required to pay their producers less than the use value of such milk to them. Distributors in the second category are required to pay to the Market Administrator the difference between the amount they have paid to their producers and the value of their milk computed on the basis of the use made by them of such milk. These moneys the Market Administrator distributes among distributors of the first category who have paid more for their milk than its use value to them.

The foregoing analysis establishes that the provisions of the License above discussed are directed to the accomplishment of but a single result: to fix the price which producers shall receive for their milk. The manner in which such price is fixed is determined wholly by conditions and practices which prevail in the dairy industry. The only one of the provisions of the License above discussed which is not immediately and directly a price-fixing provision is that providing for the base surplus plan, and the base surplus plan, as indicated, is a necessary incident to effective price fixing since it furnishes an incentive for uniform milk production in the absence of which seasonal surpluses would tend to break down the price structure fixed by the License. Similarly all of the remaining provisions of theLicense are directed toward the same end--the establishment and maintenance of a fixed producer price.

THE INTERVENER AND THE PLAINTIFF ASSOCIATION ARE ACTUALLY ENGAGED IN INTERSTATE COMMERCE AND SO ARE SUBJECT TO REGULATION BY CONGRESS.

The Agricultural Adjustment Act and the Chicago Milk License are exercises of the Federal power to regulate commerce among the several states. Section 8 (3) of the Act authorizes the Secretary of Agriculture,

> "to issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. * * * "

By Section 11 of the Act, milk and its products are defined as basic agricultural commodities. Pursuant to the authority of the Agricultural Adjustment Act, the Chicago Milk License was issued.

The activities of the plaintiff Association and of the Intervener which render them subject to Federal regulation in the conduct of their respective businesses are clearly stated in the stipulation of evidence.

The Intervener. From the stipulation it appears that all of the milk purchased by the Intervener from the plaintiff Association is transported by the Intervener from the State of Wisconsin into the State of Illinois where it is sold for consumption in fluid form. (Stip., pars. 24 and 27.) The citation of authority to demonstrate that the Intervener, in purchasing milk in Wisconsin and transporting it into Illinois for sale and consumption there, is engaged in interstate commerce, is unnecessary.

More than 17% of all milk handled by the Intervener is purchased from the plaintiff Association and more than 76% of all milk handled by the Intervener is purchased outside the State of Illinois and is transported into the State of Illinois where it is sold for consumption in fluid form. Less than one-fourth of the Intervener's supply of milk is purchased in the State of Illinois. The milk purchased by the Intervener outside of Illinois is poured into the same vats and storage tanks in its plant in Chicago into which milk produced in Illinois is poured and thereby both types of milk are inseparably intermingled. (Stip., par. 24.) The authorities applicable to this factual situation which clearly establish that the business of the Intervener is subject to Federal regulation were fully presented to this Court in the case of Edgewater Dairy Co. v. Wallace, Equity No. 13870, and will not be here repeated.

The plaintiff Association. From the stipulation it also appears that all of the milk purchased by the plaintiff Association from producers in Wisconsin is sold to the Intervener and is transported from the State of Wisconsin into the State of Illinois, where it is resold and consumed. (Stip., par. 24.) That the regulation of such transactions rests solely with Congress and is beyond the field of state control is apparent from the case of Lemke v. Farmers Grain Co. 258 U.S. 50, (1922), in which the Supreme Court considered the constitutionality of a statute of the State of North Dakota which regulated the business of purchasing from farmers within that state, grain which was largely shipped in interstate commerce outside of the state after its purchase. The statute in question was held invalid upon the ground that the power to fix prices to growers of commodities moving in the current of interstate commerce was specifically delegated to the Federal Government under the commerce clause of the Constitution.

The analogy between the conduct held in the Lemke case to be beyond the scope of state authority and to be amply within Congressional power and the activities of the plaintiff Association in the instant case is exact. There, as here, the regulation was imposed at the time when title passed from the producer. There a large proportion of the grain was shipped in interstate commerce; here all of the milk is shipped in interstate commerce. The Lemke case is tantamount to a square holding that the activities of the plaintiff Association are beyond the sphere of state supervision and are subject to Congressional regulation.

3.

THE ENTIRE MARKET FOR MILK IN THE CHICAGO SALES AREA IS "IN THE CURRENT OF INTERSTATE COMMERCE"

A.

The interstate character of the businesses of the plaintiff Association and of the Intervener plainly subjects them to Federal regulation. In addition, it is clear that the entire Chicago milk market is in the current of interstate commerce, so that the plaintiff Association and the Intervener, as well as all other distributors of milk in the Chicago Sales Area, would be subject to Federal regulation regardless of the interstate character of the business of the individual distributors.

In the Edgewater case, it was established upon the record that at least forty percent of all of the milk sold as whole milk in the Chicago Sales Area is produced outside of the State of Illinois and transported in interstate commerce into the Chicago Sales Area; that seventy-two per cent of all the cream sold in the Chicago Sales Area is likewise produced outside of the State of Illinois and transported into the Chicago Sales Area; that milk, cream and butter produced in Illinois are indistinguishable from and compete freely with milk, cream and butter produced in other states and sold in the Chicago Sales Area; that distributors of milk in the Chicago Sales Area pour milk produced within and without the State of Illinois into the same vats and storage tanks so that the two kinds of milk are physically intermingled and rendered indistinguishable one from the other, and that it is impossible to fix the price to be paid to producers of milk residing outside the State of Illinois without fixing the price of milk to be paid to Illinois producers.

These facts are also uncontroverted upon the record in the case at bar. (Stip., p. 24).

It was contended in behalf of the defendants in the Edgewater case that these facts establish that all of the milk sold in the Chicago Sales Area is in the current of interstate commerce and that therefore the business of distributing milk in that area is properly subject to Federal regulation within the doctrines announced by the Supreme Court in the Minnesota Rate Cases, 230 U. S. 352 (1913): Houston East and West Texas Railway Co. v. U. S., 234 U. S. 342 (1914); Illinois Central Railway Co. v. Public Utilities Commission, 245 U. S. 493 (1918): Wisconsin Railroad Commission v. C. B. & Q. Railroad, 257

U. S. 563 (1922); New York v. United States, 257 U. S, 591 (1922); Illinois Central Railroad Company v. Behrens, 233 U. S. 473 (1914), and Texas and Pacific Railroad Co. v. Rigsby, 241 U. S. 33 (1916).

The defendants in this case again respectfully urge upon the court that all of the transactions in the marketing of milk in the Chicago Sales Area are in the current of interstate commerce, and that therefore all distributors of milk in that area are subject to regulation under the commerce clause regardless of the intrastate character of the business of any particular distributor. Because the court is familiar with the facts upon which this contention is based and with the applicable decisions, we refrain from reiterating in full the argument presented to this court in the Edgewater case.

B.

Apart from the considerations advanced under "A", Supra: The direct effect of transactions in the marketing of milk in the Chicago Sales Area upon interstate commerce in milk and its products subjects such transactions to Federal regulation.

The facts which demonstrate that the marketing of milk in the Chicago Sales Area is also subject to federal regulation because it directly affects interstate commerce in milk and its products, are before this Court in the stipulation of evidence. From the stipulation it appears that the market for milk is national in extent. Fifty-eight per cent of all the milk produced in the United States is processed into butter, cheese and other dairy products which may be easily stored and are readily transportable. Commerce in them is nationwide. So-called "manufacturing milk" which is used exclusively for processing into butter and other dairy products is produced for the most part in highly concentrated areas in the Middle West and in New York and California. In 1932 the State of Wisconsin produced 10 per cent of all of the creamery butter, 51.5 per cent of all of the cheese, and 40.1 per cent of all of the evaporated milk produced in the United States. (Stip., pp.20 and 21.) Butter and other products manufactured from milk are transported from the states of their production into every state in the Union. (Stip., pp. 19 to 29). In addition, so-called market milk which is supplied to the urban centers of the country by producers located near the market is, in areas of surplus production, very largely in excess of local needs. The portion of such market milk not locally consumed in fluid form is manufactured into dairy products and becomes a part of the vast interstate flow of butter and other products processed from milk.

The city of Chicago is one of the primary butter markets of the nation. During the year 1933, 261,001,289 pounds of butter were received and handled through the Chicago market. This butter originated in 28 states. During the same year 36,888,974 pounds of cheese were received in the Chicago market from 31 states. (Stip., pp. 25 and 26).

Interstate movement of cream and manufactured dairy products, to the manufacture of which the bulk of all of the milk produced

in the United States is devoted, and the prices of such cream and manufactured products are vitally and directly affected by prevailing price conditions in local urban milk markets throughout the country.

Market milk ordinarily commands a higher price than manufacturing milk, and the cost of producing market milk is greater than the cost of producing manufacturing milk. The differential between the price paid to producers of market milk and the price paid to producers of manufacturing milk tends to equal the difference between (a) the cost of producing milk in accordance with applicable municipal health regulations, plus the cost of transporting fluid milk and (b) the cost of transporting manufactured dairy products, plus the cost of producing manufacturing milk. If price conditions warrant, because the differential in the price paid for the two types of milk is less than the differences in cost of transportation and production, producers will abandon the production of market milk to produce manufacturing milk, and, conversely, if the price differentials are greater than the differences in cost of transportation and production, producers will undertake the production of market milk. Price fluctuations arising from price-cutting and unfair trade practices in local fluid milk markets result in the payment to producers of market milk of prices less than the normal differentials in transportation and production costs.

The increased production of manufacturing milk and of manufactured dairy products in the local market resulting from these variations from normal differentials in the prices paid for manufacturing milk and for market milk directly affects the price and volume of butter and manufactured dairy products moving in interstate commerce because the intermarket price relationships of these products are such that the price of manufactured dairy products tends to vary between markets only by the transportation and handling costs. In the stipulation, the economic facts and the price relationships which cause an inevitable translation of the impact of disturbing conditions in a local fluid milk market into the price and volume of commodities moving in interstate commerce are fully developed. At pages 34 to 36 of the Stipulation the effect of destructive competition in unregulated markets upon interstate commerce is summarized.

Under circumstances far less clear than these, federal regulation of intrastate activity which directly affects interstate commerce has been sanctioned by the Supreme Court. One of the conspicuous instances of the exercise of such authority by Congress, which was sustained by the Court, is found in Chicago Board of Trade v. Olsen, 262 U. S. 1 (1923). Congress had enacted the Grain Futures Act which regulated transactions in grain upon the Boards of Trade of the Country. Certain of the transactions subjected to Federal Regulation by the Act, although intrastate in form, involved actual interstate movements of grain. These regulations were sustained upon the theory that the transactions regulated were indispensable incidents to the continued flow of grain from the West to the East and hence subject to Congressional regulation upon the authority of Stafford v. Wallace, 258 U. S. 495 (1922), discussed hereafter.

But the principal regulation provided for in the Grain Futures Act, and the one chiefly attacked in the Olsen case, was the regulation of trading in grain for future delivery. Such purchases and sales for future delivery rarely result in the transfer or delivery of the actual commodity. Not only are such transactions intrastate in form, but they involve no physical movement of the commodity whatsoever. Purchases for future delivery are, in the vast majority of cases, offset by sales before the delivery date arrives and vice versa, so that no physical movement of commodities is involved, even incidentally, in the transaction. The Court recognized this fact, saying: at p. 36:

> "The question under this Act is somewhat different in form and detail from that in the Stafford case, but the result must be the same. It is not the sales and deliveries of the actual grain which are the chief subject of the supervision of federal agency by Congress in the Grain Futures Act * * *. It is the contracts of sales of grains for future delivery most of which do not result in actual delivery but are settled by offsetting them with other contracts of the same kind, or by what is called 'ringing'."

Nevertheless the Court sustained the regulation of futures sales under the Grain Futures Act. The Court found that such sales had in the past, and might in the future, influence the price paid for cash grain which actually moves in interstate commerce. Congress had found in the Act that the manipulation of the price of grain futures worked to the detriment of producers, consumers, shippers and legitimate dealers engaged in interstate commerce in grain. The Court conceded that the curve of grain futures prices did not parallel the curve of cash grain prices. It pointed out that the price of grain futures and the price of cash grain were not dependent upon the same factors. It concluded, however, that speculative transactions in grain futures from time to time exerted a vicious influence upon and produced abnormal fluctuations in the price of cash grain which actually moves in interstate commerce. Based upon this finding, and although the influence of futures prices upon cash grain was held to be not constant but only occasional, the Court held that grain futures transactions were subject to regulation. In reaching this conclusion, the Court said, page 40:

> "The question of price dominates trade between the States. Sales of an article which affect the countrywide price of the article directly affect the countrywide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided." (Italics ours).

The futures transactions regulated in the Olsen case resulted in only a negligible movement of grain. The effect of futures transactions upon grain prices was not constant, but occurred only at long intervals. In the case at bar, the tremendous volume of interstate movement of dairy products in the Chicago Sales Area is pointed out in the stipulation. In addition, as the record discloses, there is a close and constant correlation between the price of milk in fluid milk markets and the price of dairy products which move in interstate commerce. Thus both the actual interstate movement and the effect of intrastate transactions upon interstate commerce are greater and more direct and immediate in the instant case than in the Olsen case. A fortiori, the power of the Federal Government to regulate local transactions which was sustained in the Olsen case may properly and constitutionally be exercised in the regulation of fluid milk in the sales area here involved.

The Court, in the Olsen case, followed the decision in Stafford v. Wallace, 258 U. S. 495, where purchases and sales of cattle at the Chicago Stockyards, although in themselves intrastate in character, were held subject to regulation by Congress because they were incidents to the national flow of interstate commerce in cattle. Although the conduct involved in the Stafford case occurred within the boundaries of a single state, it was held to be inseparable from the interstate movement to which it contributed, the intrastate incidents to the well-defined interstate movement of cattle and meat products being characterized by their part in the larger movement.

Concerning the purely intrastate purchases and sales at the Chicago stockyards, the Court said at page 516:

> "Such transactions can not be separated from the movement to which they contribute and necessarily take on its character. * * * The sales are not in this aspect merely local transactions, * * * The origin of the livestock in the West, its ultimate destination * * * is in the Middle West or East either as meat products or as stock for fattening. * * * The stockyards and sales are necessary factors in the middle of this current."

The object to be secured in the Stafford case was the free and unburdened flow of livestock through the stockyards of the nation and thence to the consumers in the form of meat products, or as livestock to feeding grounds for further preparation for the market. The object sought in the instant case is the free and unburdened flow of milk from producers through the processing plants of the nation to consumers in the form of dairy products, and in the form of milk for fluid consumption. Purchases by brokers and dealers in the Stafford case created local change of title, but they did not stop the flow. They merely changed the private interests in the current. So here, purchases by distributors create local changes of title indispensable to the continuing flow of milk and its products to the national markets, but they do not stop the flow. They must take on the character of the larger movement of which they are a part.

The concept of national "currents of commerce" was developed in Swift & Co. v. U. S., 196 U. S. 375, (1905) a bill to restrain a combination of dealers in fresh meat to control the marketing of that commodity. Concerning the contention that the bill did not set forth a case of commerce among the states the court said, page 398:

> "Taking up the latter objection first, commerce among the States is not a technical legal conception but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident to such commerce." (Italics ours.)

The authority of Congress to regulate purely local activity which burdens and affects interstate commerce is strikingly illustrated in the cases arising under the anti-trust laws.

In United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (1922), the Court was concerned with the effect of the purely local activities of striking coal miners upon interstate commerce, and after citing many cases said, at page 408:

> "It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision and restraint."

To the same effect are Swift & Co. v. United States, 196 U. S. 375 (1905), United States v. Patten, 226 U. S. 525 (1913); Loewe v. Lawlor, 208 U. S. 274 (1908); Bedford v. Stone Cutters Assn., 274 U. S. 37 (1927); Local 167 etc., v. U. S., 291 U. S. 293 (1934).

In the light of the foregoing analysis of the scope of Federal authority over interstate commerce, we submit that the multitude of cases cited by counsel for plaintiffs illustrating the extent of state powers of taxation are not in point. The fallacy of the argument advanced by plaintiffs upon page 26 of their Brief

> "Therefore, the decisions holding that a state may tax a given subject matter in the manner in which they have been taxed, is a clear holding that the subject matter is not interstate, but is local and domestic commerce."

may readily be demonstrated by a consideration of the many instances in which the state taxing power and the regulatory powers of Congress under the Commerce Clause have been exercised simultaneously. Intrastate railroad rates may be regulated by the states. Minnesota Rate Cases, 230 U. S. 352 (1913). But when such rates affect interstate commerce, Congress may regulate them. Shreveport Case, 234 U. S. 342 (1914); Railroad Commission of Wisconsin v. Chicago, Burl. & Q. Ry., 257 U. S. 563 (1922). Sales of grain on grain exchanges are intrastate sales; the states may both regulate such sales (Dickson v. Uhlmann Grain Co., 288 U. S. 188, 198 (1933) and tax the grain which is the subject of sale. Bacon v. Illinois, 227 U. S. 504 (1913). And yet detailed regulation by Congress of all transactions on the grain exchanges has been upheld. Board of Trade v. Olsen, 262 U. S. 1 (1923). Similarly, a state may tax cattle in the stockyards (Minnesota v. Blasius, 290 U. S. 1 (1933)) since they are not in interstate commerce, and yet Congress may at the same time regulate the stockyards. Stafford v. Wallace, 258 U. S. 495 (1922); Tagg Bros. & Moorhead v. United States, 280 U. S. 420 (1930). And states may tax mining, which is not interstate commerce (Oliver Iron Mining Co. v. Lord, 262 U. S. 172 (1923); Heisler v. Thomas Colliery Co., 260 U. S. 245 (1922)) while federal legislation may also apply to mining where interstate commerce is burdened. Coronado Coal Co. v. United Mine Workers, 268 U. S. 295 (1925) (the second Cornado Case).

We respectfully submit that the foregoing discussion clearly demonstrates that the Federal Government has authority to regulate transactions in the marketing of milk in the Chicago Sales Area, and that the suggested effect of the License upon the production of milk is merely incidental to the accomplishment of its main purpose, to increase a return to farmers for dairy products sold by them.

II.

FIXING THE PURCHASE PRICE OF MILK WHICH IS IN THE CURRENT OF INTERSTATE COMMERCE IS A PROPER REGULATION OF INTERSTATE COMMERCE

In the preceding point of this brief, we have discussed the interstate character of the businesses of the plaintiff Association and of the intervener and have demonstrated that the entire market for milk in the Chicago Sales Area is in the current of interstate commerce. We submit that, under these circumstances, it is clear that the Federal Government may properly require distributors to pay farmers a fixed price for milk which is in the current of interstate commerce. The Supreme Court has squarely held that the Federal Government has the power, under the commerce clause of the Constitution, to fix the purchase price of a commodity at the beginning of its interstate journey; that the fixing of the purchase price of such a commodity is clearly a regulation of

interstate commerce and hence is the exclusive province of the Federal Government. 1/

In Lemke v. Farmers Grain Co., 258 U. S. 50, the Supreme Court of the United States considered the constitutionality of a statute of the State of North Dakota which regulated the business of purchasing grain from farmers in North Dakota prior to its shipment in interstate commerce outside of the State. The statute in question permitted the purchase of grain only by licensed buyers; required the payment of State charges; provided for a system of grading, inspection and weighing, and futher fixed the price to be paid for grain purchased by a buyer in the State. The Court held the statute invalid upon the ground that it was an attempt by the State to regulate interstate commerce in derogation of the paramount power of the Federal Government. It was argued in support of the statute that the State merely attempted to regulate commerce in grain, before the interstate journey commenced, and, therefore, while such grain was still in intrastate commerce. The Court, however, stated that none of its previous decisions had indicated that interstate commerce does not include the buying and selling of products for shipment beyond State lines. Further the Court says (at page 58):

> "Nor will it do to say that the State law acts before the interstate transaction begins. It seizes upon the grain and controls its purchase at the beginning of interstate commerce". (Underscoring ours throughout.)

The proponents of the legislation further argued that it was in the interests of the grain growers and essential to protect them "from fraudulent purchases, and to secure paymen to them of fair prices for the grain actually sold." In reply to this contention the Court said (page 61);

> "This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce placed by the Constitution under federal control."

1/ Under a subsequent point of this brief we shall show that the fixing of the price to be paid to producers for milk does not violate the due process clause of the Fifth Amendment to the Constitution. Here we limit ourselves to establish that Congress has the power to fix such prices under the commerce clause.

Thus, in holding invalid the North Dakota statute which sought to fix the price farmers were to be paid for their grain, the Court expressly held that such power to fix prices (with respect to commodities moving in interstate commerce) was specifically reserved to the Federal Government under the commerce clause of the Constitution. Indeed, the Supreme Court regarded the fixing of the purchase price of a commodity which moves in interstate commerce so direct, immediate, and vital a regulation of interstate commerce that it held the states without power to fix such price, even in the absence of prior federal regulations preempting the field.

The power of the Federal Government to fix the price of an agricultural commodities which moves in interstate commerce, was thus specifically passed upon and upheld by the Supreme Court in the Lemke case. It is precisely this power which Congress has exercised in the Agricultural Adjustment Act, and which the Secretary of Agriculture has executed under the Chicago Milk License with respect to milk sold in the Chicago Sales Area.

The decision in the Lemke case squarely refutes the contention of the plaintiffs (paragraph 15 of the First Amended Bill of Complaint; paragraph 21 of the Bill of Intervention) that the transactions between the individual plaintiffs and the plaintiff Association are subject to control solely by the State of Wisconsin. On the contrary, the State of Wisconsin is clearly without the power to control these transactions.

The doctrine of the Lemke case, that the fixing of the price to be paid for a commodity before the commencement of its interstate journey is a matter for federal regulation under the commerce power, was repeated by the Supreme Court with approval in a decision rendered as recently as February 1934 and applied by it with respect to the fixing of prices of commodities at the end of the interstate journey. In Local 167 I.B.T., etc., v. U. S., 291 U. S. 293, the Court said: at p.297:

> "But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commcerce."

The Supreme Court has recognized in other cases that the price of a commodity which moves in interstate commerce and charges in connection with its handling are so directly related to the interstate movement of the commodity itself that price regulations may be appropriately made in the exercise of the power of the Federal Government to regulate interstate commerce.

Thus in Stafford v. Wallace, 258 U. S. 495, the Supreme Court sustained the constitutionality of the Federal Packers and Stockyards Act. This it did notwithstanding the fact that the Act regulated

transactions of commission merchants, dealers and packers, which of themselves were purely intrastate in character, including the regulation of commissions and charges made by them for handling livestock. In upholding the Act the Court said (at page 514):

> "The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the Act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the livestock through the stockyards, all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer."

The Stafford case was followed by the cast of Tagg Brothers & Moorhead v. United States, 280 U. S. 420, in which the Supreme Court specifically upheld a regulation of the Secretary of Agriculture, under the Packers and Stockyards Act, fixing the commission which might be charged by commission men in the Omaha stockyards as a proper regulation of interstate commerce.

In Chicago Board of Trade v. Olsen, 262 U. S. 1, the Court, in upholding the constitutionality of the Grain Futures Act, said (at page 40):

> "The question of price dominates trade between the states. Sales of an articles which affect the country-wide price of the article directly affect the country-wide commerce in it".

We respectfully submit, therefore, that the decisions of the Supreme Court in the foregoing cases establish the proposition that fixing the price to the producer of a commodity is clearly a proper means of regulation under the commerce clause of the Constitution.

III.

The Chicago Milk License is a reasonable and appropriate regulation of the dairy industry and does not violate the due process clause of the Fifth Amendment.

The plaintiffs and the intervener have attacked the valididty of the Chicago Milk License on the ground that it deprives them of due process. We shall here show (a) that the price-fixing provisions of the License are valid, (b) that the provision of the License superseding prior conflicting contracts doesnot violate the due process clause, and (c) that the issuance of the License without a hearing did not deprive the plaintiffs and the intervener of due process of law.

A.

The License, in fixing the price to be paid to producers for milk, does not violate the due process clause.

It should be noted at the outset that where the Supreme Court has found in a particular case that the regulation in question was within the power of the Federal Government to regulate interstate commerce, it has seldom questioned the validity of such regulation under the due process clause of the Fifth Amendment. See Louisville & Nashville Railroad v. Mottley, 219 U. S. 467 (1911); Philadelphia B. & W. R. R. v. Schubert, 224 U. S. 603 (1912); Calhoun v. Massie, 253 U. S. 170 (1920).

In Nebbia v New York, 291 U. S. 502, (1934) the Supreme Court upheld the constitutionality of a New York statute, providing for regulation of the dairy industry, which was in all material respects identical with the regulation imposed by the Chicago Milk License. The Court said (p. 525):

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power by securing that the end shall be accomplished by methods consistent with due process. And the guarantee of due process, as has often been held, demands only that the law

> shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. ***The court has repeatedly sustained curtailment of enjoyment of private property, in the public interest. The owner's rights may be subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community."

If this type of regulation of the dairy industry of the State of New York was unobjectionable under the due process clause, there is all the more reason for upholding the validity of regulation of the dairy industry under a nation-wide program, such as is exemplified in the Agricultural Adjustment Act and the various milk licenses issued thereunder. The record in this case shows that milk is the most important of all farm commodities and that 25% of the total farm income of the United States is derived from dairy products. It shows that the dollar value of dairy products sold in the United States is in excess of that derived from our most important industrial products, steel and automobiles. The production and distribution of milk in the States of Wisconsin and Illinois, as well as in the country as a whole, is a paramount industry which largely affects the health and prosperity of the people. The importance of the dairy industry has further been recognized and is demonstrated by innumerable State and local statutes and ordinances affecting the production and distribution of milk. Many states and almost every municipality in the country have passed measures regulating the health and sanitary requirements for the production and distribution of milk. In addition, eleven State legislatures have recently enacted legislation, similar in its purpose to the Agricultural Adjustment Act and the Chicago Milk License, to assure to farmers a fair return for their milk production.

It will be noted that in its opinion in Nebbia v. New York the Supreme Court did not base its decision solely on the existence of an emergency, although the emergency situation does appear to have been one of the factors which the Court considered as making for the reasonableness of the regulation. The Agricultural Adjustment Act is by its very terms an emergency statute. The declaration of emergency contained in the Act is in effect a finding by Congress that the welfare of the farmers is so intertwined with the national welfare that it is necessary to increase farm purchasing power in order to remedy the evils of the depression. The facts with reference to the extent of the emergency, particularly as it affects agriculture, are fully set forth in the Government publication entitled "Economic Bases of the Agricultural Adjustment Act", a copy of which is presented herewith to the Court.

It is, of course, clear that an emergency cannot give rise to a power which did not previously exist. However, an emergency may create a set of circumstances which in the words of the Supreme Court may afford "a reason for the exercise of a living power already enjoyed." Wilson v. New, 243 U. S. 332, 348, (1917). See also Block v. Hirsch. 256 U. S. 135 (1921); Marcus Brown Holding Company, v. Feldman, 256. U. S. 170 (1921); Home Building & Loan Association v. Blaisdell, 290 U. S. 398 (1934.

Thus, the regulation of the milk business is to be justified by reason of (1) the great importance of this industry to the general welfare, an importance which obviously places it in the category of a business affected with a public interest, and (2) the widespread economic depression which bore with particular severity upon agriculture.

Not only in the regulation as such of the milk business valid but the specific regulation here in question, namely, the price-fixing provision of the license, is clearly within the powers of the Federal Government.

The right of the Government to fix prices, where price-fixing is necessary for the protection of the public welfare, has been squarely upheld by the Supreme Court of the United States in the Nebbia case, supra. We respectfully submit that the decision of the Supreme Court of the United States in the Nebbia case finally disposes of the contention that the price-fixing provisions of the Chicago Milk License violate the due process clause of the Fifth Amendment. As we have noted above, the statute of the State of NewYork involved in the Nebbia case authorized the Milk Control Board to fix the price which distributors were required to pay to producers for milk purchased. The statute further authorized the Board to fix the price at which milk might be resold by distributors to consumers. Pursuant to the statute, the Board fixed both producer and resale prices. The defendant in the Nebbia case challenged the fixed resale price upon the ground that the fixing of prices was beyond the power of the State under the due process amendment. Although the only portion of the New York regulations squarely involved in the Nebbia case was the right to fix resale prices, the Court in a sweeping opinion, upheld the entire New York Act and specifically held that price-fixing is a proper regulation where the public welfare requires it. In reaching this conclusion the Supreme Court said, at p. 538:

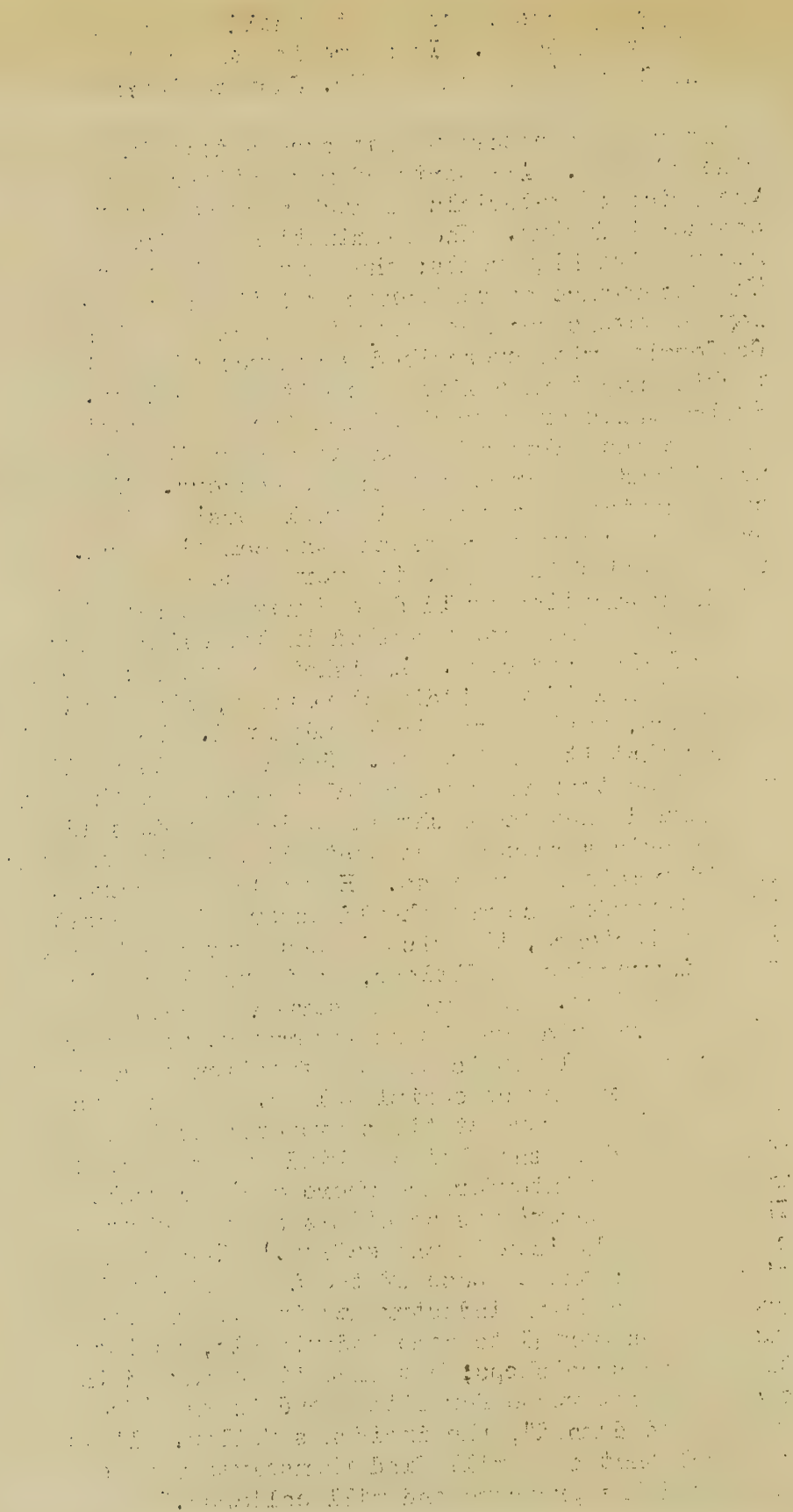
> "If the law-making body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumers' interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the legislature to be fair to those engaged in the industry and to the consuming public. And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at the one end of the series and the consumer the other."

In a second case arising under the New York Milk Control Act, a three-judge Federal Court sitting in New York specifically upheld the constitutionality of the regulation of the New York Control Board fixing the price to be paid to producers. Heggeman Farms Corporation v. Baldwin et al., 6 Fed. Supp. 297(1934)The plaintiff dairy company, in that case alleged that the price fixed by the New York Milk Control Board would compel them to do business at a loss and hence would eliminate him from business, as do the plaintiff Association and the Intervener in the case at bar. But despite the showing made by the

plaintiff in the Heggeman case, the Court upheld the producer price fixed by the Milk Contfol Board. In answering the contention made by the plaintiffs, the Court (speaking by Mr. Justice Learned Hand) said: at p. 298:

> "It must be apparent that such a doctrine will have wide effects. All sorts of regulations may affect the price of materials or machinery necessary to another industry. The elimination of fire hazards may require high rents; they may not be attainable. The observance of sanitary regulations in factories may be epxensive; more than the market will bear. Conformity with prescribed standards of quality and packing may turn a living profit into a loss. Excise taxes are a part of manufacturing costs; the buyer cannot always be made to absorb them and the added load may drive out some producers. Workmen's compensation or a change in employers' liability may prove the straw which breaks the camel's back. If the plaintiff be right, in every case the validity of the regulation would depend upon whether the addition to the cost resulted in the elimination of some of the producers. Legislation could scarcely go on at all if its indirect results, its final incidence, must be so nicely adjusted. Nor does it follow that it ought to be. Surely, it is a milk assumption that the more vital interest in the end may demand that there should be lean goods sold at higher prices rather than that all existing manufacturers should remain in business. He would be a hardy exponent of noninterference who should assert the opposite today; if, for instance, the rise in cost was due to improvements in working conditions, or in the hygienic quality of the product. The purpose served by fixing the price of a raw material may be as imperative as either of these; certainly it is not the function of a court to set the hierarchy of social values. In the past, it is true, there were at times expressions in the books which seemed to say that one kind of government purpose would justify interference where another would not. The 'police power' was sometimes spoken of as though it concerned only 'health and safety.' That mode has disappeared; the purpose of the State of New York to preserve its dairy industry may involve remote repercussions as mortal to some individuals, as its purpose to abolish sweatshops; but once it be agreed that the state may interpose for either and in the "free play of supply and demand", the incidents follow. It is not critical that some will find themselves unable to withstand the pressure and will collapse."

The constitutionality of the milk license for the Chicago Sales Area issued by the Secretary of Agriculture under the Agricultural Adjustment Act, has been specifically upheld as against the due process



objection by the District Court for the Northern District of Illinois, Eastern Division, in the case of United States et al. v. Shissler et al., 7 Fed. Supp. 123. (1934).

We respectfully submit that the foregoing decisions conclusively establish the constitutionality of the provision in the Chicago License fixing producers' prices for milk purchased. An analysis of the License prices is before the Court in this case, in which the License prices are thoroughly analyzed and from which it appears that such prices (a) tend to achieve the declared policy of the Agricultural Adjustment Act by a gradual adjustment of prices toward the parity level as defined in the Act; and (b) were very carefully calculated, having in mind competitive conditions and consumptive demand.

B.

The exercise of the proper powers of the federal government may not be limited by private contracts.

The contractual relationships between the Intervener, the plaintiff Association and the individual plaintiffs are set forth in the stipulation. (Stip., Paragraphs 19, 20, and 22; Exhibits F and G). The contracts between the plaintiff Association and the individual plaintiffs provide that the price which the individual plaintiffs shall be paid for their milk shall be the average price received by the plaintiff Association upon re-sale of the milk, minus a uniform charge for operating expenses. (The provisions of these contracts relating to deductions to create reserves and to pay dividends upon preferred stock are not before the Court in the instant case since the record is devoid of any allegation that the plaintiff Association has ever issued preferred stock or that reserves have ever been deemed necessary by the Board of Directors of the plaintiff Association).

The License specifically authorizes producers' cooperative associations to make deductions from payments to their members sufficient to cover actual operating expenses. It is readily apparent, therefore, that if the plaintiff Association receives the License price for milk sold by it, makes deductions sufficient to meet its operating expenses, and pays the balance of the money received by it to its members, there is no conflict between the provisions of the License and contracts between the plaintiff Association and its members.

The pre-existing contract between the plaintiff Association and the Intervener, however, provides that the Intervener should pay for milk purchased by it from the plaintiff Association at a price different from the price fixed in the License. As has been pointed out, the amendment to the License which became effective August 22, 1934, provided that contracts between distributors inconsistent with the provisions of the License are superseded. Obviously, this amendment does not operate to the prejudice of the plaintiff Association. It

will receive, under the amendment, a higher price for its milk than it has theretofore received. The effect upon the Intervener is not to discriminate against it by placing it in a category by itself but rather to place it upon equal and fair competitive terms with other distributors in the market and to require it to pay a fair and reasonable price for the milk purchased by it.

The clause of the Federal Constitution prohibiting the impairing of the obligation of contracts by its terms applies specifically to state government and is not a limitation upon the power of the federal government. This is apparent from the fact of the constitutional provision, and has been frequently affirmed by the courts. See Sinking Fund Cases, 99 U. S. 700, 718 (1878); New York v. U. S., 257 U. S. 591 (1922): Bloomer v. Stolley, 3 Fed. Cas. No. 1559 (Cir. Ct. D. Ohio (1850); Hammons v. Watkins, 262 Pac. 616, 33 Ariz. 76 (1927); Michigan Central R. Co. v. Slack, 17 Fed. Cas. No. 9257A at 263 (Circ. Ct. D. Mass. 1876); Evans-Snider-Buel Co. v. McFadden. 105 Fed. 293, 207 (C. C. A 8th 1900); Nortz v. Miller, 285 Fed. 778, 780 (S. D. N. Y. 1921), aff'd 285 Fed. 781 (C. C. A. 2d 1922).

With one exception, all of the cases cited by plaintiffs in support of their contention that a provision of the License superseding prior conflicting contracts is invalid, involve state legislation and, therefore, have no bearing upon the case at bar. The exception is the case of Lynch v. U. S., 292 U.S.571 (54 Sup. Ct. Rep. 840 (1934) which involved the power of Congress to impair War Risk Insurance contracts. As is pointed out by Mr. Justice Brandeis, the court was not there deciding that Congress was entirely without power to enact legislation impairing the validity of contracts, but rather that in that particular case there was no showing that conditions existed which justified the exercise of the power. He said, at p. 579:

> "The Solicitor General does not suggest either in brief or argument that there were supervening conditions wich authorized Congress to abrogate these contracts in the exercise of the police or any other power."

The court thus recognized its well settled doctrine that Congress in the exercise of its powers, may, where necessary to the proper execution of those powers for the benefit of the public, abrogate or modify contract rights.

In the case as bar, the provisions of the License superseding conflicting contracts between distributors are incidental to the object sought to be accomplished in the Agricultural Adjustment Act, the restoring of the purchasing power of agriculture.

The object of the Act, clearly stated therein, is to rehabilitate the purchasing power of producers of agricultural commodities, thereby increasing the flow of interstate commerce. This purpose may not be accomplished if pre-existing contracts are permitted to prevent the operation of the means designated in the Act to accomplish its purpose.

The successful operation of the License and its effectiveness to accomplish the purposes stated in the Act depend upon its enforcement as to all distributors in the market. To permit distributors by their prophetic discernment of future government regulation to place themselves in a position to disregard with impunity the regulations imposed upon all other distributors would result in the inevitable failure of any regulation. Nor is federal legislation and administration regulation pursuant thereto, so circumscribed under the decisions of the Supreme Court.

The Federal power, in the exercise of constitutional authority, to enact and enforce laws which impair the obligation of contracts has been redognized in numerous cases. In Mitchell v. Clark, 110 U. S. 633 (1884), dealing with legislation providing certain defenses to actions brought against public officers for acts done in obedience to orders during the Civil War, the Supreme Court succinctly stated the test to be applied in determining the constitutionality of federal legislation which interferes with prior contracts (p. 643):

> "Where the question of the power of Congress arises, as in the legal tender cases, and in bankruptcy cases, it does not depend upon the incidental effect of its exercise on contracts, but on the existence of the power itself."

In the Legal Tender Cases, 79 U. S. 457 (1871) the Court upheld the validity of legislation enacted in the exercise of the currency powers of Congress, requiring that greenbacks be legal tender in payment of all contractual obligations. Explicitly it held "the acts of Congress constitutional as applied to contracts made either before or after their passage." (p. 553). Discussing the power of Congress to impair contractual obligations, it stated: (p. 549)

> "Directly it may, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely. So it may relieve parties from their apparent obligations indirectly in a multitude of ways. It may declare war, or, even in peace, pass non-intercourse acts, or direct an embarto. All such measures may, and must operate seriously upon existing contracts, and may not merely hinder, but relieve the parties to such contracts entirely from performance. It is, then, clear that the effect of such exertion may be in one case to annul, and in other cases to impair the obligation of contracts."

It is in the exercise of its power to regulate commerce that Congress has perhaps most frequently acted to nullify the provisions of existing contracts. This is illustrated by cases upholding the validity, as against conflicting contractual obligations, of statutes or regulations prohibiting rebates, concessions or discriminatory freight rates.

Armour Packing Co. v. U. S., 209 U. S. 56 (1908); New York v. U. S., 257 U. S. 591 (1922); Lewis, Leonhardt & Co. v. Southern R. Co., 217 Fed. 321, 324 (C. C. A. 6th, 1914); W. M. Carter Planing Mill Co. v. New Orleans, M. & Co. R. Co., 112 Miss. 148, 72 So. 884 (1916). Contracts providing for free passes must also yield the statutory provision against receiving "a greater or less or different compensation" for the transportation of persons or property than that specified in the published schedule of rates. Louisville & Nashville R. Co. v. Mottley, 219 U. S. 467 (1911); Louisville & Nashville R. Co. v. Crowe, 160 S. W. 759 (Ky. 1913); Bell v. Kanawaha Traction & Electric Co., 98 S. E. 885 (W. Va. 1919). The Employers' Liability Act superseded prior contractual arrangements inconsistent with its terms. Philadelphia, Baltimore & Wash. R. R. v. Schubert, 224 U. S. 603 (1912). An agreement in restraint of trade, although lawful when made, became illegal on the passage of the Sherman Act. U. S. v. Trans-Missouri Freight Association, 166 U. S. 290 (1897). Prior contracts have also been held subject to the provisions of the Clayton Act. Motion Picture Patents Co. v. Universal Film Mfg. Co., 235 Fed. 398 (C. C. A. 2nd, 1916); Elliott Machine Co. v. Center, 227 Fed. 124 (W. D. Mich. 1915). Contra, U. S. v. United States Show Machinery Co., 264 Fed. 138 (E. D. Mo. 1920), basing its decision, however, on its construction of the language of the Act and not on constitutional grounds.

The considerations which underlie decisions upholding the power of Congress to override the terms of prior contracts are stated in the Schubert case, supra, at p. 613, in the following terms:

> "The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. Prior arrangements were necessarily subject to this paramount authority."

In a case as recent as Sproles v. Binford, 286 U.S. 374 (1932) concerning a state statute regulating highway traffic, the Court said, at p. 390:

> "With respect to the power of Congress in the regulation of interstate commerce, this Court has had frequent occasion to observe that it is not fettered by

the necessity of maintaining existing arrangements which would conflict with the execution of its policy, as such a restriction would place the regulation of interstate commerce in the hands of private individuals and withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. Louisville & Nashville R. Co. v. Mottley, 219 U. S. 467, 482; Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603, 613, 614; New York Central & Hudson River R. Co. v. Gray, 239 U. S. 583; Continental Ins. Co. v. United States, 259 U. S. 156, 171."

We respectfully submit that the accomplishment of the purposes of proper Congressional legislation may not be prevented by pre-existing contractual relationships.

C.

THE PLAINTIFFS AND THE INTERVENER ARE NOT DEPRIVED OF DUE PROCESS OF LAW BECAUSE THE LICENSE HAS ISSUED WITHOUT A HEARING

The plaintiffs and the intervener contend that they have been deprived of their property without due process of law because there was no hearing prior to the issuance of the License or the amendments thereto. It is true that no hearing was conducted previous to the issuance of the License, but there are several hearings available to the plaintiffs and the intervener in which they can show that they are suffering deprivation of property because of the existence and the operation of the License. These hearings are:

(1) The hearing provided for in General Regulations, Series 3, Section 300, under which any person licensed under the Act who considers himself injuriously affected by any term or condition of a License, may file with the Secretary a written application for modification of the License setting forth his grounds. The Secretary may then give due notice to all interested parties and set the complaint down for a hearing. This regulation has been continuously in effect since August 26, 1933.

(2) The adequate and complete administrative hearing provided for in General Regulations, Series 3, Section 200, for failure to comply with the terms and conditions of the License. In this proceeding, an alleged violator can introduce all the objections he could raise in a hearing prior to the issuance of the License.

(3) If the License of a distributor is revoked as a result of this hearing it then becomes necessary for the Secretary of Agriculture to enforce this revocation in a legal proceeding either (a) by way of injunction to restrain the distributor from doing business, or (b) by way of a suit to collect the fines imposed by the Act for doing business without a license. Each of these proceedings affords the distributor an additional opportunity for a hearing.

(4) Another opportunity for a hearing is afforded a person who considers himself aggrieved by the License by way of a bill in equity to enjoin the operation of the License.

With all these hearings open to the plaintiffs and the intervener, their argument that the License deprives them of their property without a hearing is clearly without merit.

Due process of law requires only that a person have an opportunity to be heard at some stage of the proceeding on the question of deprivation. In many cases of actual and direct taking of property, the United States Supreme Court has held that due process is satisfied by a judicial hearing after the taking. Some of these cases are:

(a) Assessment and collection of taxes. Murray's Leasee v. Hoboken Land and Improvement Co., 59 U. S. 272 (1856); Hagar v. Reclamation District, 111 U. S. 701 (1894); Wells Fargo & Co. v. State of Nevada, 248 U. S. 163 (1918); Phillips v. Commissioner, 283 U.S. 589 (1931). In Nickey v. Mississippi, 292 U.S. 383 (decided May 21, 1934), the appellants claimed that their property had been assessed without notice and an opportunity to be heard in any proceeding. Collection of the taxes was by means of a suit in the state courts where a hearing could be had. The Supreme Court said: (p. 396)

> "There is no constitutional demand that notice of the assessment of a tax and opportunity to contest it must be given in advance of the assessment."

(b) Protection of the public health. No. American Cold Storage Co. v. Chicago, 211, U. S. 306 (1908); Adams v. Milwaukee, 228 U. S. 572 (1913).

(c) Summary seizure of the property of citizens in wartime. Central Union Trust v. Garvan, 254 U. S. 554, 566 (1920).

(d) Eminent domain proceedings by the United States. Kohl v. U. S., 91 U. S. 367, 375 (1875); Phillips v. Commissioner, supra, at p. 597.

Even in these cases which involved the physical and tangible taking of property, due process was held to be satisfied by a judicial inquiry after the taking. In our case, the mere issuance of the License does not under any circumstances directly deprive the plaintiffs of any property. If the License prices operate in such a manner as to be confiscatory to these plaintiffs, they have the opportunities of both administrative and judicial hearings in which to present their objections. The mere threat of economic injury does not require a hearing as an initial step in the proceeding. See Buttfield v. Stranahan, 192 U. S. 470, 497 (1904) in which the Tea Inspection Act of 1897 was held valid against the objections that no hearings were had before the Secretary of the Treasury in establishing the standards. See also Bartlett Frazier Co. v. Hyde, 65 F. (2d) 350 (C.C.A. 7th) (1933) in which the Grain Futures Act was held not unconstitutional becuase it does not provide notice and an opportunity to be heard.

A further illustration of this principle is seen in the recent case of U. S. v. Illinois Central R. Co., 291 U. S. 457 (decided March 5, 1934) in which the Supreme Court reversed the decree of a district court setting aside an order of the Interstate Commerce Commission. Under the Inland Waterways Corporation Act, the Interstate Commerce Commission is empowered to grant a certificate of public convenience and necessity to a prospective water carrier, to order all connecting common carriers who join with such water carrier in through routes and joint rates, and to fix minimum differentials between all rail rates and joint rates. The rates in this case were fixed without a hearing. To the objection that this was not due process the Supreme Court said, at p. 463:

> "Without attempting to lay down any general rule but confining ourselves to the statute and case in hand, we accordingly hold that it was not essential under the due process of law clause that a hearing should be accorded in advance of the initiating order."

In many of the cases cited above in which it was held that a judicial hearing after the taking satisfied due process, the proceeding was quasi-judicial in nature and affected the individual alone. If the constitutional safeguards are met by a hearing after the taking in these cases, then certainly it would seem to follow that due process would not be denied under a quasi-legislative act affecting a large number of people when several hearings are available before final enforcement. This reasoning is supported by eminent authority. In Bi-Metallic Co. v. State Board of Equalization of Colorado, 239 U. S. 441 (1915) the Colorado Tax Commission had increased the valuation of all taxable property in Denver, forty percent. The plaintiff protested that it was given no opportunity to be heard and that therefore its property was taken without due process of law. In rendering the opinion of the Supreme Court, Mr. Justice Holmes said, at p. 445:

> "The question then is whether all individuals have a constitutional right to be heard before a

matter can be decided in which all are equally concerned. * * * *

"Where a rule of conduct applies to more than a few people it is impracticable that every one should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule. If the result in this case had been reached as it might have been by the State's doubling the rate of taxation, no one would suggest that the Fourteenth Amendment was violated unless every person affected had been allowed an opportunity to raise his voice against it before the body entrusted by the state constitution with the power. In considering this case in this court we must assume that the proper state machinery has been used, and the question is whether, if the state constitution had declared that Denver had been undervalued as compared with the rest of the State and had decreed that for the current year the valuation should be forty per cent. higher, the objection now urged could prevail. It appears to us that to put the question is to answer it. There must be a limit to individual argument in such matters if government is to go on. * * *" (Underscoring supplied)

The issuance of this License and the amendments thereto affected not only the plaintiffs and the intervener but all distributors in the Chicago Sales Area and all producers supplying them with milk. The issuance of the License was in the nature of a quasi-legislative act constitutionally delegated to the Secretary of Agriculture by Section 8 (3) of the Agricultural Adjustment Act. There are many cases which go to the extreme of holding that when an administrative officer acts in a quasi-legislative capacity, his action need not be subject to previous hearing or subsequent judicial review. Typical of these cases is Commonwealth v. Sisson, 189 Mass. 247, 75 N.R. 619 (1905) in which the defendants were prosecuted for violation of an order of the fish and game commissioner prohibiting the discharge of saw-dust into a river. The order of the commissioner was held to be legislative in character and required neither previous notice nor hearing. See also Health Dep't. of City of New York v. Rector of Trinity Church, 145 N.Y. 32, 39 N.E. 833 (1895), and the many cases cited in Mott, Due Process of Law p. 229.

The defendants, however, do not contend that because the issuance of the License and amendments constitute quasi-legislative actions, the persons subject thereto, are not entitled to a hearing or a judicial review. The defendants insist that both an administrative and a judicial hearing are available to any person who contends that the License prices are confiscatory.

The cases cited by the plaintiffs in support of their argument are clearly inapplicable both on their law and on their facts, to the situation in this case. In Chicago, Milwaukee and St. Paul Ry. v. State of Minnesota, 134 U. S. 418 (1890) there was no available hearing at any time either administratively or judicially. This case is authority only for the proposition that in the fixing of rates there must be a hearing at some time. In Interstate Commerce Commission v. Louisville, 227 U. S. 88 (1913), there was a hearing provided and consequently the statement about the necessity of a hearing is pure dictum. Moreover, this dictum is specifically limited to administrative orders "quasi-judicial" in character. Missouri Ry. Co. v. Tucker, 230 U. S. 340 (1913) and Oklahoma Operating Co. v. Love, 252 U. S. 331 (1920) are concerned exclusively with judicial review of an administrative order and not with a previous hearing.

Southern Railway v. Virginia, 290 U. S. 190 (1933) concerned a state statute authorizing the Virginia Commissioner of Public Safety to order the abolition of a grade-crossing without any hearing or judicial review. The plaintiff on due process grounds had demurred to the complaint filed with the Virginia Corporation Commission by the Commissioner of Public Safety. The Corporation Commission found that the state police power justified the proceeding. The plaintiff on this question of law then took the case to the Virginia Supreme Court by writ of error. After sustaining the Corporation Commission, the Virginia Court in the last few lines of the opinion indicated that if the Commissioner's action should be arbitrary "equity's long arm" would stay his hand.

The majority opinion of the United States Supreme Court held that the statute was void because it afforded no adequate protection to the railroad. No hearing of any description was contemplated or provided for and the indefinite right of resort to a court of equity was held to be insufficient in the absence of a hearing. The opinion treated the action of the Commissioner as quasi-judicial in nature, and in support of its ruling in this case cited the cases involving quasi-judicial activities. The minority viewed the action of the Commissioner as a validly delegated lesiglative power which required no hearing previous to its exercise.

This case and the other cases cited in the brief of the plaintiffs serve as further illustrations of the principle that due process in procedure is not a technical formula applied without reference to the particular facts. Due process in procedure is sufficiently satisfied if adequate protection is afforded on the question of deprivation

of property. As shown previously, there are several hearings available on the question of the License prices, and consequently there is no denial of substantial protection.

IV.

THE POWER GIVEN TO THE SECRETARY OF AGRICULTURE, BY VIRTUE OF THE AGRICULTURAL ADJUSTMENT ACT, IS A CONSTITUTIONAL AND VALID DELEGATION OF POWER.

In laying down a primary standard and delegating to others the administrative power to apply and make effective such a standard, Congress does not effect an unconstitutional delegation of legislative power.

Field v. Clark, 143 U. S. 649. (1892).
Buttfield v. Stranahan, 192 U. S. 470. (1904).
Union Bridge Co. v. United States, 204 U. S. 364., (1907).
United States v. Grimaud, 220 U. S. 506, (1911).

The Supreme Court in Hampton, Jr., & Co. v. United States, 276 U.S. 394, (1928) thus stated its unvarying rule on this point:

> "The field of Congress involves all and many varieties on legislative action, and Congress has found it frequently necessary to use officers of the Executive Branch, within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations (p.406)."

The Courts, in applying this general principle to specific statutes, have recognized the problem as a practical one and one not subject to hard and fast rules:

Wayman v. Southard, 10 Wheat. 1, (1825)
Avent v. United States, 266 U. S. 127, (1924)

In Buttfield, v. Stranahan, supra, the Court, in upholding the Tea Inspection Act of 1897, which authorized the Secretary of the Treasury to set standards of purity for imported tea and to exclude all teas which did not come up to the standard set by him indicated its eminently pragmatic approach to the delegation problem (p. 496):

> "Congress legislated on the subject as far as was reasonably practicable, and from the necessities

> of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted."

The unbroken line of cases in which the United States Supreme Court has held statutes valid as against the charge that they delegated legislative power indicates that it recognizes Congress as the best judge, both of its own capacity to deal with the details of administration and of what is best left to administrative officers. No attempt will be made in this brief to enter into an involved discussion of the numerous cases in which delegations of power have been upheld. A few leading cases will illustrate the nature and extent of the application of the general principle to specific statutes more or less analogous to the Agricultural Adjustment Act.

Field v. Clark, 143 U. S. 649, concerns the authority conferred upon the President to equalize duties on imports and to suspend by proclamation the free introduction of sugar, molasses, coffee, tea, and hides when he is satisfied that countries producing such articles impose duties upon agricultural or other products of the United States which the President deems "to be reciprocally unequal or unreasonable." Such legislation was upheld as a proper delegation of administrative power to the President. In terms reminiscent of the necessity for administrative action under the Agricultural Adjustment Act, the court said:

> "The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation (p. 694).

The validity of the flexible tariff provision of the Tariff Act of 1922 was upheld in the case of Hampton, Jr. & Co. v. U. S., 276 U. S. 394. This provision, which authorized the President, upon investigation of differences in foreign and domestic cost of production, to change the classification and rates of duty initially established in the Tariff Act, required the President to take into account differences in selling price of domestic and foreign articles, as well as other advantages or disadvantages in competition. The bench, in surveying the full implications of the delegation argument, was evidently appalled by the complications that would ensue if Congress had to fix each rate itself. The opinion relied on the precedents upholding rate-fixing in interstate commerce.

"Again, one of the great functions conferred on Congress by the Federal Constitution is the regulation of interstate commerce and rates to be exacted by interstate carriers for the passenger and merchandise traffic. The rates to be fixed are myriad. If Congress were to be required to fix every rate, it would be impossible to exercise the power at all. Therefore, common sense requires that in the fixing of such rates Congress may provide a Commission, as it does, called the Interstate Commerce Commission, to fix those rates. After hearing evidence and argument concerning them from interested parties, all in accord with a general rule that Congress first lays down, that rates shall be just and reasonable considering the service given, and not discriminatory (p.408)."

In United States v. Grimaud, 220 U. S. 506, Supreme Court upheld a statute declaring that the Secretary of Agriculture "may make such rules and regulations and shall establish such service as will insure the objects of such reservation, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violations of the provisions of this Act or such rules and regulations shall be punished * * *." The Secretary issued regulations providing that persons must secure permits before driving and grazing any sheep stock in a forest preserve, and made charges in connection therewith. The charges were for the purpose of preventing excessive grazing and thereby protecting the young growth and native grasses and to cover management expenses. In approving the regulations, the Court said (p. 516):

"In the nature of things it was impracticable for Congress to provide general regulations for those various and varying details of management. Each reservation had its peculiar and special features; and in authorizing the Secretary of Agriculture to meet these local conditions Congress was merely conferring administrative functions upon an agent, and not delegating legislative power. * * * "

Concerning the provision of the Transportation Act of 1920 empowering the Interstate Commerce Commission to grant preferences in the order of purposes for which coal may be carried in interstate commerce, the opinion rendered in Avent v. United States, 266 U. S. 127, stated, at p. 130:

"The requirements that the rules shall be reasonable and in the interest of the public fixes the only standard that is practicable or needed."

This entire problem is very adequately and fully covered in the opinion of the court in Ryan v. Amazon Petroleum Co., 71 Fed. (2d) 1 (C. C. A. 5th).

Section 2 of the Agricultural Adjustment Act, together with the declaration of emergency in the Act, lays down an immediate objective or general standard in economic terms; namely, the removal of burdens and obstructions to the normal currents of commerce in agricultural commodities in order to secure parity prices for farm products. The "parity price" as dealt with in the Act, is not a vague or uncertain concept; it is one which is definite and specific and can be computed by a mathematical formula. That this is so is clearly demonstrated by the computation of the parity price for milk in the Chicago Sales Area which is before the Court. Thus, when Congress delegated to the Secretary of Agriculture, the power, through the issuance of licenses, pursuant to Section 8 (3) of the Act, to raise the purchasing power of the American farmer to the parity level, the Congressional mandate was definite and specific. It laid down a definite primary standard and delegated to the Secretary the administrative power to attain such a standard.

Further, the Agricultural Adjustment Act specifically provides for various methods to be used by the Secretary of Agriculture in effectuating the policy of the Act. One of such methods is provided for in Section 8 (3) of the Act. In such section the Secretary is authorized, for the purpose of effectuating the policy of the Act, to issue licenses to persons engaged in the handling of agricultural commodities in the current of interstate commerce, regulating the terms and conditions of such industry.

The number of industries covered by the Agricultural Adjustment Act is innumerable. The administrative difficulties which would be inherent in any plan of having Congress regulate the terms and conditions to be included in the license for each industry make it perfectly obvious that any such procedure is impossible. The standard provided for in the statute is clear and explicit. The task which remains for the Secretary of Agriculture is an administrative one, namely, to provide the machinery in each industry whereby the policy of the Act may be effectuated by increasing the returns to producers for their agricultural commodities, in order, as soon as possible, to achieve parity prices for such commodities.

Particularly in a time of national economic emergency such as this, detailed legislation is impractical. In U. S. v. Calistan Packers, Inc., 4 Fed. Supp. 660 (D. C., N.D., Calif.), (1933) the Federal District Court in upholding Section 8 (3) of the Agricultural Adjustment Act, recognized that the efficacious operation of a statute is a vital consideration and sustained the constitutionality of the delegation of powers to the Secretary of Agriculture in the following words (p. 661):

> "It may readily be answered that where Congress has laid down fairly definite standards, the Courts have consistently held that the procedure thereunder, even to the extent of providing rules and regulations, violations of which may be punished, may be placed in the hands of the administrative agencies of the Government. This power of delegation is highly essential to the efficiency of such statutes."

The plaintiffs contend that the Act is invalid because the President of the United States is authorized to terminate Title I of the Act when the national economic emergency with respect to agriculture is ended. A reference to the list of similar provisions in Field v. Clark, 143 U.S. 649, 691, 692 refutes this contention. In Hampton Jr. & Co. v. U.S., 276 U.S. 394, 407, Chief Justice Taft stated:

> "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave determination of such time to the decision of an executive. * * * ".

We submit that the powers delegated in the Act are well within constitutional limitations.

V.

THE CONTENTION THAT THE ACT AND LICENSE ARE UNCONSTITUTIONAL BECAUSE THEY "PERMIT THE TAXING OF INCOME AND PROPERTY OF CITIZENS OF THE UNITED STATES FOR THE BENEFIT OF" FARMERS IS WITHOUT MERIT.

A. Plaintiffs apparently do not challenge the processing tax provisions of the Act. There is no processing tax on milk. Plaintiffs' contention, therefore, is not based upon the fact that they, as dealers in milk, have to pay any processing taxes. Their contention is based upon the single allegation that the Meadowmoor Dairies, Inc. is a general taxpayer and as a taxpayer they challenge the constitutionality of Section 12 (a) of the Agricultural Adjustment Act which reads:

> "There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title. Such sum shall remain available until expended."

The point is that the monies contained in this appropriation are diverted for the benefit of farmers and, hence, such appropriation is unconstitutional.

Even were this contention correct, we first point out that such fact is wholly immaterial to any issues in this case. This case involves solely the question of the validity of the Chicago Milk License issued pursuant to Section 8 (3) of the statute and that question in no wise

turns upon, in any degree, the validity of the appropriation section above pointed out; nor is Section 8 (1) of the Act, which provides for rental and benefit payments made with respect to reduction, connected in any way with Section 8 (3) (the license section). Suppose Section 12 (a) were unconstitutional. What of it? It certainly has no bearing on any issue in this case.

B. As a taxpayer the Meadowmoor Dairies, Inc. has no legal right to question the validity of the appropriation. This has been held in Frothingham v. Mellon, 262 U. S. 447 (1923): at p. 488:

> "But the relation of a taxpayer of the United States to the Federal Government is very different. His interest in the moneys of the Treasury--partly realized from taxation and partly from other sources--is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity.
>
> "The administration of any statute likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public, and not of individual, concern. If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect to the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. * * * "

C. Funds expended pursuant to the Agricultural Adjustment Act are expended for the general welfare of the nation as a whole and not for a purely private purpose. It has been shown above that the legality of the expenditures made pursuant to the Agricultural Adjustment Act is wholly unrelated to the issues as framed by the pleadings in the instant case, and that complainants do not have a sufficient interest to question the expenditures. However, conceding, arguendo, that the public purpose needs to be established to maintain the validity of the appropriation made, a cursory examination of the Agricultural Adjustment Act demonstrates that the appropriations are clearly made for a public purpose.

As evidenced by its declaration of emergency and policy, the Act is an effort to restore the purchasing power of thirty millions of our population, the farming communities of the nation. But it is not merely in the interest of farmers. It is the averred expectation of the Act that by rehabilitating their purchasing power for industrial products, and only so, will the orderly exchange of commodities be restored and a resurgence of industrial and commercial activity attained. In short, it is the economic welfare of the whole nation at which the Act is aimed. It is a matter of elementary economics that the impoverishment of a large class of potential purchasers is not confined in its evil effects to that class. This impoverishment of the farming population of the United States, as recited in the declaration of emergency, has rendered impossible the orderly exchange of industrial against agricultural commodities and has become thereby, in the judgment of Congress and most authorities on economics, one of the most important causes of the economic emergency, with its attendant widespread unemployment and misery, confronting the nation at the time of the passage of the Agricultural Adjustment Act. The impressive recovery of business, which must in part be attributed to the Agricultural Adjustment Act, is vivid testimony to the public purpose of the Act. This recovery of business is reflected in the improved economic position of almost every member of the American nation, thus, proving conclusively that Congress had indeed provided for the "general welfare" of the United States. The fact that, incidentally, private benefits have been conferred cannot vitiate the public purpose of the Act.

See Noble State Bank v. Haskell, 219 U. S. 104, (1911).
Fallbrook Irrigation District v. Bradley, 164 U.S. 112 (1896).
O'Neill v. Leamer, 239 U. S. 244 (1915).

D. The provisions in the License with respect to the Equalization Pool are not open to constitutional attack.

Plaintiffs criticize the provisions in the License with respect to the Equalization Pool and in so doing characterize them as "taxation of certain distributors or licensees under the said License for the benefit of other distributors or licensees thereunder." The entire argument of plaintiffs is comprised in about one paragraph.

Our reply thereto is as follows:

1. The plaintiffs completely misapprehend the operation and effect of the Equalization Pool. It does not purport to, nor does it constitute taxation in any form. Nor does the Equalization Pool confer a benefit upon certain distributors at the expense of others. A full, elaborate and clear explanation of the operation of the Equalization Pool is contained in the stipulation of facts filed in this case. (Stip., pp. 39 and 40). See also the explanation contained in this brief. We refrain from repeating here what has already been said. We wish, however, to point out that it clearly appears from our analysis that the sole obligation imposed upon distributors by the price provisions of the license is the obligation imposed upon each distributor to pay for his milk in

accordance with the use which he makes of his milk. The Equalization Pool simply provides the mechanics to accomplish this result. The Equalization Pool imposes no obligation upon distributors in addition to their obligation to pay for milk at fixed prices, depending upon their use of milk. Hence, if the license provision fixing the price to producers for each class of milk sold by distributors is valid, the Equalization Pool is not subject to attack since it is simply a part of this provision and imposes no further obligation upon distributors.

2. Under the principles announced by the Supreme Court of the United States in the case of Nebbia v. The State of New York, we submit that the License provisions requiring each distributor to pay for milk at a fixed price, depending upon the form in which such milk is sold is clearly constitutional and is not subject to attack under the due process amendment. Therefore, the Equalization Pool is likewise constitutional and valid.

VI.

REPLY TO PLAINTIFFS' CONTENTION THAT THE PURE MILK ASSOCIATION WAS ORGANIZED UNDER AN UNCONSTITUTIONAL STATUTE.

The only discussion on this point in plaintiffs' breif is as follows:

"Point XI

A - The defendant, Pure Milk Association, is organized under the cooperative Agricultural Act of the State of Illinois. The United States Supreme Court held an Act substantially the same as this act unconstitutional in Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 583, 584, 6 L. ed. 679, 691, 692, 22 S. Ct. 431. Therefore, there is no such legal entity upon which the classification and the references contained in the License may be based." (Italics ours).

In addition to the Connolly case plaintiffs cite a number of other cases "to the same effect". Plaintiffs have wholly failed to argue this point and have also failed to point out (1) why the Illinois statute under which the Pure Milk Association was organized is unconstitutional and (2) if it were, what bearing that would have upon any issue in this case. Plaintiffs have elsewhere in their brief pointed out that the Pure Milk Association is mentioned in the Chicago Milk License in the following connection: The License requires that certain deductions be made by distributors from the prices which the producers are to receive and in case of non-members of the Pure Milk Association, states that the deductions shall be the same as in the case of members of that Association. The services for which the deductions are authorized are services which have in the past been rendered by the Pure Milk Association to its members, and the cost of furnishing such services to the Pure Milk Association furnishes a reasonable standard of the cost to the Market Administrator.

Plaintiffs in their brief have inadvertently and incorrectly referred to the Pure Milk Association as a defendant in this case. The Pure Milk Association is not a defendant in this case and is not a party to this case. Even if for any reason, the Illinois statute, under which the Pure Milk Association is organized, should be unconstitutional, such fact in no wise could affect any of the issues in this case. In view of the fact that plaintiffs have wholly failed to show the materiality of such a contention, there is no occasion for considering the correctness of such a contention.

In any event none of the plaintiffs here have any locus standae to raise the question of the constitutionality of the statute under which the Pure Milk Association was incorporated. This case is not a proceeding brought under that statute or to prosecute any of the plaintiffs in any way under such statute. There is nothing that appears in this record indicating that the unconstitutionality of the Illinois cooperative statute can injure or affect any of the plaintiffs in the case at bar. It is a fundamental rule of constitutional law that no one can attack or question the constitutionality of a statute unless he is actually affected in some way by that statute. We believe this point was not seriously made, and in any case, is obviously without merit.

CONCLUSION

For all of the foregoing reasons, we respectfully submit that the Chicago Milk License is (a) valid and (b) applicable to both the Intervener and the plaintiff Association. The replies of both the Intervener and the plaintiff Association to the counterclaims of defendants expressly admit that they have violated the Chicago Milk License. If this court held in favor of the Government with respect to the two questions of law just stated, it follows that the Government is entitled to, and we respectfully submit that this court should enter a decree permanently enjoining both the Intervener and the plaintiff Association from violating the terms and conditions of the Chicago Milk License.

Respectfully submitted.

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_____
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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COLUMBUS MILK PRODUCERS COOPERATIVE ASSOCIATION et al, Plaintiffs,

-vs-

HENRY A. WALLACE, et al., Defendants.

In Equity No. 13,985

M E M O R A N D U M

This Case came before the court upon a final hearing upon the merits.

Plaintiffs are seeking a permanent injunction restraining the defendants from enforcing the Chicago Milk License. The defendants, Secretary Wallace and United States District Attorney Green, are seeking a permanent injunction restraining the plaintiffs from violating the terms and conditions of the Chicago Milk License.

The case has been heard upon a stipulation of facts. The original plaintiffs are the Columbus Milk Producers Co-operative Association, a Wisconsin corporation, and one-hundred twenty individual dairy farmers who are members of the plaintiff Association. The intervener is Meadowmoor Dairies, Inc., which has intervened in this cause as a party plaintiff. It is an Illinois corporation and has its place of business in the City of Chicago, in said State. The defendants are Henry A. Wallace, Secretary of Agriculture, Homer J. Cummings, Attorney General of the United States, Dwight H. Green, United States District Attorney for the Northern District of Illinois, and Frank C. Baker, Market Administrator for the Chicago Sales Area under the Chicago License for Milk.

It has been stated that the basic issues in this case presented to this court, broadly stated, are, First, Whether the Chicago Milk License is legally valid, and Second, Whether it is applicable to the plaintiff Association and the Intervener.

The individual plaintiffs are dairy farmers residing in Wisconsin. They are each members of and stockholders in the plaintiff Association. They produce milk on their farms, transport it to the plant of the plaintiff Association, located in the town of Astico, Wisconsin, and there sell it to the plaintiff Association. Prior to the enactment of the Agricultural Adjustment Act, the individual plaintiffs and the plaintiff Association entered into contracts, whereby each of the individual plaintiffs receives from the plaintiff Association the average price received by the Association for milk of a similar quality sold by it during the same period, less deductions for the operating expenses of the plaintiff Association. Prior to the enactment of the Agricultural Adjustment Act, the plaintiff Association entered into a contract with the intervener whereby the plaintiff Association obligated itself to sell to the intervener all the milk which it received from the individual plaintiffs. This contract is still in force, and by its terms the plaintiff Association is to receive from the Intervener a price equal to the average current price paid for milk by three Wisconsin condenseries, plus

40 cents per hundred-weight. The Intervener transports the milk purchased by it from the plaintiff Association from Astico, Wisconsin, to the plant of the Intervener in Chicago, where all of said milk is sold by the Intervener and consumed in fluid form as Class I milk as defined in the License.

The plaintiff Association and the Intervener are distributors, as defined in the License, and are required by the License to pay for milk purchased by them in accordance with its terms. Neither the plaintiff Association nor the intervener has complied with the provisions of the License with respect to the purchase of milk by them.

The court is of the opinion that there is no material difference in principle between this case and the case of Edgewater Dairy Co. v. Wallace, Equity No. 13,878, decided by this court in June, 1934.

In the Edgewater Dairy Case the milk was produced, sold and consumed within the State of Illinois. In this case, the milk is produced in the State of Wisconsin, transported by the producers to the plant of the plaintiff, Columbus Milk Producers Association in the town of Astico, Wisconsin, and there sold to the plaintiff Association. After being processed by plaintiff Association, the milk is sold by the Association to other distributors, including the intervener, Meadowmoor Dairies, Inc., who call for it at the plant of the Association. The production, transportation from farm to dairy plant, and transfer of title from producer to distributor all take place within the State of Wisconsin.

The defendants contend that, upon the stipulated facts, both the plaintiff Association and the Intervener are actually engaged in interstate commerce. The court is of the opinion that the defendants are correct in this contention, but is further of the opinion that this is immaterial.

Defendants further contend that the entire Chicago Sales Area with respect to milk is "in the current of interstate commerce". The court does not believe that this contention is well founded, but further believes that whether the entire Chicago Sales Area with respect to milk is "in the current of interstate commerce" is immaterial.

As stated in the memorandum in the Edgewater Dairy Case, the Milk License, in the opinion of this court, has three purposes: First, to fix the minimum price at which producers may sell their produce; Second, to limit the production of milk by means of assigning to producers thereof so-called "bases;" and, Third, to charge the cost of administration under the License to producers.

The fact that an article is produced for export to another states does not of itself make it an article of interstate commerce within the meaning of Section 8, Article I, of the Constitution. The power to regulate interstate commerce, or transactions affecting interstate commerce, does not embrace the power to regulate the production of articles intended for commerce. In Heisler v. Thomas Colliery Co., 260 U.S. 245, 259, it is said:

> "***We can estimate the contention made. It is that the products of a State that have, or are destined to have, a market in other States, are subjects of interstate

> commerce, though they have not moved from the place of their production or preparation.
> "The reach and consequences of the contention repel its acceptance. If the possibility, or indeed, certainty of exportation of a product or article from a State determine it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages designed for and surely to be exported to States other than those of their production. However, we need not proceed further in speculation and argument. Ingenuity and imagination have been exercised heretofore upon a like contention.***". (Italics are the court's).

In Hammer v. Dagenhart, 247 U.S. 251, 272, it is said:

> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation."

See also: U.S. v. Knight, 156 U.S. 1; Kidd v. Pearson, 128 U.S. 1; Chassaniel v. Greenwood, 291 U.S. 584; Hart Coal Corp. v. Sparks, 7 Fed. Supp. 1, 22.

The view of this court in respect of the validity of the Chicago Milk License are stated with some particularity in a memorandum which was filed in the Edgewater Dairy Case, supra, Perhaps a further word should be said concerning the "bases" by said license provided to be assigned to producers. The court is of the opinion that it appears from the Milk License in question that the principal purpose of the provisions therein relating to "bases" is to limit the production of milk. Unless a dairy farmer has been assigned to him a "base", the milk produced upon his dairy farm cannot be sold in a district for which a license has been promulgated. It is said, on behalf of the defendants, that the milk may be sold outside of such districts. But assuming that there are districts for which licenses have not been promulgated and that there will continue for all time to be such districts (which is a violent assumption), still the provisions of the license in respect of "bases" is a limitation upon production.

It is the court's opinion that the Milk License in question is invalid because of lack of authority in the Secretary of Agriculture and in Congress to regulate the production of milk.

Having determined that the Chicago Milk License is not valid, it is unnecessary to consider the question as to whether the license is applicable to the plaintiff Association and the Intervener.

The motion of the plaintiffs and the intervening petitioner for an injunction will be granted, and that of the cross-plaintiffs for an injunction will be denied.

Counsel may prepare, and on due notice present, a draft of an appropriate order.

(Signed) Barnes
Judge.

DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Columbus Milk Producers Cooperative Association, et al	:	
Plaintiffs,	:	
v.	:	In Equity
Henry A. Wallace, et al,	:	No. 13985
Defendants.	:	

STIPULATION OF EVIDENCE

It is hereby stipulated by and between the parties to the above entitled cause by their solicitors of record, that said cause shall be heard and decided upon the issues raised by the pleasings heretofore filed herein; and that in order to expedite the trial of said issues, the facts and evidence upon which the court shall make its decision shall be such only as are contained in this stipulation and facts of which the court may take judicial notice; provided, however, that each of the parties expressly reserves the right to contend that any facts or evidence recited in this stipulation are not material or relevant to the issues herein; and expressly reserves the complete and full right to appellate review, as provided by law, of any decree which may be entered in this court upon this stipulation.

The following facts are hereby stipulated and agreed upon:

1. The plaintiff, Columbus Milk Producers Cooperative Association, is a corporation duly organized under and by virtue of the laws of the State of Wisconsin and having its principal place of business in the town of Astico, in the State of Wisconsin. It will be referred to hereinafter as the "plaintiff Association."

2. Each of the other plaintiffs herein is a citizen and a resident of the State of Wisconsin, residing therein and in the vicinity of the said town of Astico and is a stockholder of and in the plaintiff Association. These parties will be referred to hereinafter as the "individual plaintiffs."

3. Meadowmoor Dairies, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business in the City of Chicago, in the State of Illinois, and is a taxpayer of and to the United States of America. It will be referred to hereinafter as the "Intervener."

4. The defendant Henry A. Wallace is a citizen and resident of the city of Des Moines in the State of Iowa, and is the duly appointed, qualified and acting Secretary of Agriculture of the UnitedStates of America. As Secretary of Agriculture, his official residence is in the City of Washington, in the District of Columbia.

5. The defendant Rexford Guy Tugwell is a citizen and resident of the City of New York in the State of New York and is now the duly appointed, qualified and acting Under-Secretary of Agriculture of the United States of America. As Under-Secretary of Agriculture, his official residence is in the City of Washington in the District of Columbia. On the thirty-first day of May, 1934, and on the twenty-first day of August, 1934, was Acting Secretary of Agriculture of the United States of America.

6. The defendant Homer J. Cummings is a citizen and resident of the City of Greenwich in the State of Connecticut, and is the duly appointed, qualified and acting Attorney General of the United States of America. As Attorney General, his official residence is in the City of Washington in the District of Columbia.

7. The defendant Dwight H. Green is a citizen and resident of the City of Chicago, County of Cook, and State of Illinois, and is the duly appointed, qualified and acting United States Attorney for the Northern District of Illinois, Eastern Division.

8. The defendant Frank C. Baker is a citizen and resident of the City of Chicago and State of Illinois, and is now and ever since February 5, 1934, has been serving as the duly qualified Market Administrator under appointment and designation by Henry A. Wallace as Secretary of Agriculture of the United States of America, pursuant to the Agricultural Adjustment Act and in accordance with the terms and provisions of License No. 30-License for Milk, Chicago Sales Area, issued by the defendant Henry A. Wallace as Secretary of Agriculture of the United States of America, on February 3, 1934. This License is more fully referred to hereinafter.

9. On May 12, 1933, the law of the United States of America known as the Agricultural Adjustment Act was enacted by Congress and was approved by the President of the United States of America. It has been since amended. Both as originally enacted and as now amended it will hereinafter be referred to as the "Act".

10. On February 3, 1934, the defendant Henry A. Wallace as Secretary of Agriculture of the United States of America, acting under and in pursuance of the authority granted to him by Section 8 (3) of the Act, executed and issued a License for Milk - Chicago Sales Area. A true copy of said License is attached to this stipulation, marked "Exhibit A", and hereby made a part hereof by this reference thereto.

11. Thereafter, and on May 31, 1934, the defendant Rexford G. Tugwell, then the duly appointed and qualified Assistant Secretary of Agriculture of the United States of America, acting as Secretary of Agriculture of the United States of America, under and in pursuance of the

authority granted to him by Section 8 (3) of the Act, executed and issued a License for Milk - Chicago Sales Area, as Amended. A true copy of said License, as amended, is attached to this stipulation, marked "Exhibit B", and hereby made a part hereof by this reference thereto.

12. Thereafter, and on June 30, 1934, the defendant Henry A. Wallace as Secretary of Agriculture of the United States of America, acting under and in pursuance of the authority granted to him by Section 8 (3) of the Act, executed and issued an Amendment to the Amended License for Milk - Chicago Sales Area. A true copy of said Amendment to the Amended License is attached to this stipulation, marked "Exhibit C" and hereby made a part hereof by this reference thereto.

13. Thereafter, and on July 17, 1934, the defendant Henry A. Wallace as Secretary of Agriculture of the United States of America, acting under and in pursuance of the authority granted to him by Section 8 (3) of the Act, executed and issued an Amendment to the Amended License for Milk-Chicago Sales Area. A true copy of said Amendment to the Amended License is attached to this stipulation, marked "Exhibit D" and hereby made a part hereof by this reference thereto.

14. Thereafter, and on August 21, 1934, the defendant Rexford G. Tugwell, Under-Secretary of Agriculture of the United States, acting as Secretary of Agriculture of the United States, under and in pursuance of the authority granted to him by Section 8 (3) of the Act, executed and issued an Amendment to the Amended License for milk - Chicago Sales Area. A true copy of said Amendment to the Amended License is attached to this stipulation, marked "Exhibit E" and made a part hereof by this reference thereto. "License No. 30 - License for Milk, Chicago Sales Area," set forth in Exhibit A hereto attached, together with the Amendments thereto set forth in Exhibits B, C, D and E hereto attached, is hereinafter in this stipulation referred to as "the License". Whenever reference is made herein to the provisions of the License upon a specific date or during a specified period, the term "the License" shall mean "License No. 30 - License for Milk, Chicago Sales Area", as amended and in force upon the specific date or during the specified period referred to.

15. Since February 5, 1934, and for four years continuously theretofore, each of the individual plaintiffs has been and each is now engaged in the business of dairy farming, and in the pursuit of his said business each maintains milch cows and herds thereof, farms, barns and other equipment suitable for the production, in conformity with the applicable health requirements of the Chicago Sales Area as defined in the License, of milk to be sold for consumption as whole milk in said Chicago Sales Area.

Each of the individual plaintiffs has an investment of $3,000 in the milch cows and herds thereof, farms, barns and other equipment used by him in the production of milk, and the said milch cows and herds thereof, farms, barns and other equipment used by him are of the present value of more than $3,000.

Each of the individual plaintiffs is a "producer" as defined in Article 1, Paragraph A, of the License.

16. Each of the individual plaintiffs conducts his business wholly and exclusively within the territorial limits of the State of Wisconsin and sells all the milk so produced by him to the plaintiff Association. The sale of this milk to the plaintiff Association and the terms and conditions of the said sale are as provided in certain contracts or marketing agreements existing between the individual plaintiffs and each of them and the plaintiff Association. These several contracts or marketing agreements will be more particularly referred to hereinafter.

17. Since February 5, 1934, and for five years continuously theretofore the plaintiff Association has been and it now is engaged in the business of distributing dairy products. In the course and conduct of its business it purchases milk from the individual plaintiffs, and all of such purchases of milk have at all times been made at the dairy plant owned and operated by it in the town of Astico, Wisconsin. Its dairy plant at Astico, including equipment therein, has a present value of $50,000. The Plaintiff Association is a "Distributor" as defined in the License.

18. The method by which the milk arrives at the plaintiff Association's dairy plant in Astico is as follows: Each individual plaintiff himself transports or obtains transportation for his milk from his farm to the dairy plant of the plaintiff Association in Astico where the milk is delivered into the possession of the plaintiff Association and the sale of the milk by the individual plaintiff to the plaintiff Association takes place. The production, transportation from farm to dairy plant, and transfer of title from producer (the individual plaintiff) to distributor (plaintiff Association) all take place within the State of Wisconsin.

19. Plaintiff Association has from time to time entered into a contract with each of the several individual plaintiffs. None of these contracts has lapsed, expired, been changed or abrogated and all of them are now and have continuously since on or before January 1, 1931, been in full force and effect. With the exception of differences in names and addresses and dates of execution, these contracts are idential in form and content. A true copy of one of these contracts, omitting date of execution and name and address of the "producer", is attached to this stipulation, marked "exhibit F" and hereby made a part hereof by this reference thereto.

20. In accordance with the terms and provisions of the agreements between the plaintiff Association and the respective individual plaintiffs (which documents will hereinafter be referred to as "marketing Agreements") plaintiff Association has since the effective date of the License, and at all times since the execution of the respective marketing agreements, purchased all milk produced by the individual plaintiffs, respectively, and has paid to the individual plaintiffs for their milk the average price received by the plaintiff Association upon its sale thereof, minus

a uniform charge on all the said milk of the same grade, kind, type or quality, substantially to cover the expense of operating the plaintiff Association, but at no time since the effective date of the License, and at no time since the execution of the said marketing agreements, or any of them, has the plaintiff Association acted as the agent, broker, factor or collective marketing agent of the individual plaintiffs, or any of them, under any or all of the said marketing agreements. Under and in conformity with the terms of the said marketing agreements and all of them, the individual plaintiffs have, during the months of February, March, April, May, June, July and August, 1934, received an average net price of $1.18 for each hundredweight of milk of 3.5% butterfat content, sold by them to the plaintiff Association. Had the plaintiff Association paid the individual plaintiffs for milk purchased by it from them in accordance with the terms and provisions of the License, the individual plaintiffs would have received the following net prices per hundredweight of milk of 3.5% butterfat content in the following months: For the month of February, 1934, $1.31; for the month of March, 1934, $1.37; for the month of April, 1934, $1.37; for the month of May, 1934, $1.42; for the month of June, 1934, $1.61

21. Following the delivery of milk by the individual plaintiffs to plaintiff Association, as hereinabove described, the plaintiff Association pasteurizes, separates and processes the milk so purchased at its plant by the use of its machinery and equipment. After being processed, the milk is sold by the plaintiff Association to other distributors thereof who call for it at the plant of the plaintiff Association, the sale and delivery by the plaintiff Association to such other distributors being at all times made at the plaint or dairy building of the plaintiff Association. A great portion of the milk so sold by the plaintiff Association to other distributors has, for the five years last past, been ultimately consumed in the Chicago Sales Area as defined in the License.

22. On May 3, 1933, the plaintiff Association entered into a written contract with the Intervener. Since May 3, 1933, the Intervener has been and now is engaged in the purchasing, selling, distributing, and vending of milk, cream, and other dairy products within the Chicago Sales Area, as that Area is defined in the License, and has been and now is a "distributor" as defined in the License. A true copy of the contract between plaintiff Association and the Intervener is attached to this stipulation, marked "Exhibit G" and hereby made a part hereof by this reference thereto.

23. Before the expiration of the contract (Exhibit G) and in accordance with its terms and provisions, by notice duly given thereunder, the Intervener renewed the contract with the plaintiff Association for a term of one year from May 3, 1934, and the renewal of the contract was duly accepted by the plaintiff Association, This contract will not expire, under its own terms and provisions, until May 2, 1935.

Since February 5, 1934, the Intervener has been and is now the sole and only customer of the plaintiff Association. Prior to May 2, 1934, the Intervener gave to the plaintiff Association notice of

intention either to hold the plaintiff Association to the strict fulfillment of the terms and conditions of their contract as renewed or to treat the said contract as abrogated and cancelled and to refuse to buy from or to accept delivery of any milk from the plaintiff Association.

24. Since February 5, 1934, plaintiff Association has, in accordance with the terms and provisions of its contract with the Intervener (Exhibit G) sold and delivered to the Intervener milk at a price of approximately $1.47 per hundredweight, that sum being the average price computed under paragraph Fourth of said contract. Since said date the Intervener has transported, or has caused to be transported, all milk sold by the plaintiff Association to the Intervener from the State of Wisconsin into the City of Chicago in the State of Illinois, where, in accordance with the common practice in this respect, it has been physically intermingled, in the plant of the Intervener, with milk produced in Illinois, and has been thereafter sold by the Intervener and consumed, as Class I milk as defined in the License, in said City of Chicago.

25. Plaintiff Association is unable, without the cooperation of Intervener to comply with sub-paragraph 3 of Paragraph 4 of Section A of Exhibit A of the License, which requires each distributor to report from time to time to the Market Administrator as to the quantities of milk sold as Class I, Class II and Class III milk, respectively. The reason for its inability so to report is that it sells all milk handled by it to the Intervener and accordingly has no independent knowledge as to which class said milk or any part thereof ultimately falls into.

26. In accordance with the License, bases have been established for the individual plaintiffs. Since February, 1934, the blended price per hundredweight for delivered base milk and the price per hundredweight of surplus milk as computed by Frank C. Baker pursuant to the provisions of the License; the quantities of delivered base milk, of surplus milk and the total quantity of milk received by the plaintiff Association have been as follows:

	February	March	April	May	June
Blended price for delivered base milk f.o.b. Chicago, 70 mile zone.	$1.57	$1.59	$1.60	$1.68	$1.84
Price for surplus and Class III milk.	.89	.86	.78	.81	.89
Delivered base milk received, lbs.	597,364	661,035	639,711	668,851	666,630
Surplus milk received	187,486	222,375	132,324	112,149	114,370
Total quantity of milk received	784,850	893,310	772,035	801,000	781,000

27. The plant of the plaintiff Association is located at Astico, Wisconsin, which is approximately 125 miles from the City Hall in Chicago. None of the individual plaintiffs are members of the Pure Milk Association, which is a corporation organized under an Act of the General Assembly of the State of Illinois entitled, "An Act in Relation to Agricultural Co-operative Associations and Societies", approved June 21, 1932, as amended.

Since the effective date of the License and continuously for more than one year theretofore, the Intervener has been engaged in the business of distributing milk and dairy products. In the course of its business it purchases milk from the plaintiff Association and from other distributors of milk and milk products in the states of Illinois, Indiana, and Wisconsin. Approximately 17.69 per cent of the Intervener's supply of milk is purchased from the plaintiff Association. Approximately 76.61% of all whole milk purchased by the Intervener is purchased from distributors located in Wisconsin and Indiana. Milk so purchased by the Intervener is transported, or caused by it to be transported from Wisconsin or Indiana to its dairy plant in the City of Chicago where said milk is stored, processed, bottled and sold in the City of Chicago within the Chicago Sales Area, as defined in the License. Intervener purchases no milk directly from farmers or producers thereof; all milk purchased by the Intervener is purchased from other distributors of milk, including distributors who are co-operative associations of producers.

The Intervener has an investment of approximately $100,000.00 in its dairy plant or building in the City of Chicago, which is equipped for the conduct of the business of the Intervener.

28. Pursuant to the Act, Henry A. Wallace, Secretary of Agriculture, made and published the following General Regulations, Agricultural Adjustment Administration, upon the following respective dates:

Aug. 25, 1933, General Regulations, Series 3,
Aug. 29, 1933, General Regulations, Series 3, Article of Amendment No. 1,
Aug. 16, 1933, General Regulations, Series 4,
Jan. 3, 1934, General Regulations, Series 4, Revision 1,
June 5, 1934, General Regulations, Series 4, Revision 1, Article of Amendment No. 1.

Copies of each of the aforesaid General Regulations are marked respectively Exhibits "H", "I", "J", "K" and "L", and are attached hereto and made a part hereof by this reference thereto.

Any and all notice which was required to be given by the Secretary in (a) issuing the License, and (b) amending said License, by any applicable then existing general regulations prescribed by the Secretary of Agriculture was in all respects duly given in full compliance with any and all of the then existing applicable general regulations made and prescribed by the Secretary of Agriculture.

29. It is further stipulated and agreed that the following is a statement of the testimony which E. W. Gaumnitz would give if called as a witness:

My previous economic training and experience are as follows:

Graduated University of Minnesota, 1921, degree of B. S., and subsequently received degree of M. A., and Ph. D.; Instructor and Assistant Professor of Agricultural Economics, University of Minnesota, 1921-1925; Agricultural Economist, Dairy Production, Iowa State College, 1925-1928; Agricultural Economist, California State Department of Agriculture, 1928-1930; Agricultural Economist, Market Research in Dairy Products, Bureau of Agricultural Economics, U. S. Department of Agriculture, 1930-1933; Economic Advisor, Dairy Section, Agricultural Adjustment Administration, since May, 1933.

I. Economic status of milk producers as a result of the depression.

Throughout the country, a wide disparity exists between the prices received by farmers for dairy products and the prices paid by said farmers for commodities purchased. In August, 1934, the prices received by farmers for dairy products in terms of purchasing power were but 65 percent of the prices received for said products during the period August, 1909 to July, 1914 (the base period specified in the Agricultural Adjustment Act, pursuant to the provisions of which the Chicago License was formulated).

The average farm prices in money (not purchasing power) received by Illinois, Wisconsin and Indiana producers per hundredweight of milk sold at wholesale during the base period, August, 1909 to July, 1914, during the years 1929--1933, inclusive, and the first eight months of 1934, respectively, were as follows:

	Illinois	Wisconsin	Indiana
Base period, August, 1909 - July, 1914	$ 1.57	$ 1.26	$ 1.62
1929	2.38	2.05	2.43
1930	2.17	1.63	2.17
1931	1.74	1.15	1.71
1932	1.38	.88	1.33
1933	1.27	.97	1.27
1934:			
January	$ 1.35	$ .95	$ 1.35
February	1.40	1.08	1.40
March	1.30	1.10	1.50
April	1.30	1.02	1.45
May	1.30	1.02	1.40
June	1.45	1.06	1.40
July	1.65	1.04 1/	1.45
August	1.50		1.50
Average, first eight months, 1934:	$ 1.41	$ 1.04 2/	$ 1.43

1/ Preliminary.
2/ Seven-month average.

The average dealers' buying price, per hundredweight, f.o.b. country station within 70 miles of the City Hall in Chicago, for Class I milk having an average butterfat content of 3.5 percent during the years 1929-1933, inclusive, and the first eight months of 1934, respectively, were as follows:

1929		$ 2.67
1930		2.67
1931		2.32
1932		1.91
1933		1.70
1934		
	January	$ 2.00
	February	1.75
	March	1.75
	April	1.75
	May	1.75
	June	2.00
	July	2.25
	August	2.25
Average, first eight months, 1934:		$1.94 per hundredweight

The following table indicates the gross income received by milk producers for milk produced on farms in Wisconsin, Indiana, Illinois, and in the United States, for the years 1929 and 1932, respectively:

	Wisconsin	Indiana	Illinois	U. S.
1929	$228,552,000.	$68,110,000.	$104,376,000.	$2,322,553,000.
1932	99,157,000.	36,396,000.	63,308,000.	1,260,424,000.

The foregoing figures indicate a decline in gross income from milk between 1929 and 1932 of 56.6 percent in Wisconsin, of 46.6 percent in Indiana, of 39.3 percent in Illinois, and of 45.7 percent in the United States.

The decline in the income to the dairy farmer from his sale of milk has been caused in part by the widespread economic depression which has reduced the price which consumers were willing or able to pay for milk. The reduction in the demand for milk has led to unwarranted price cutting, extended price wars, and other methods of destructive competition among distributors. In the course of such price wars distributors reduced the price paid by them to the farmers for milk purchased below the point justified by the existing supply and demand situation. Such unwarranted price cutting, if continued, would ultimately result in a shortage of milk for fluid consumption, since some producers and distributors who were needed to supply the market with normal fluid milk requirements would be forced out of business. The practice of price cutting thus operates to the detriment of producers, distributors and consumers. The disastrous decline in the price received by farmers for milk has led to strikes and violence in a number of metropolitan milk sheds. Between June, 1933 and February, 1934, such producer strikes occurred in the States of Illinois, Connecticut, Pennsylvania and New York.

The issuance of the Chicago License for Milk is part of a comprehensive nationwide plan being put into effect by the Secretary of Agriculture pursuant to the powers vested in him by the Agricultural Adjustment Act for the purpose of restoring the purchasing power of the dairy farmer by the gradual adjustment of such purchasing power to its pre-war level during the period 1909-1914. Licenses for milk similar to the Chicago License have been issued and are now in effect in the following forty-two important fluid milk areas: St. Louis, Missouri; Alameda County, California; Philadelphia, Pennsylvania; Baltimore, Maryland; Los Angeles, California; San Diego, California; Des Moines, Iowa; Minneapolis and St. Paul, Minnesota; Omaha, Nebraska and Council Bluffs, Iowa; Evansville, Indiana; Boston, Massachesetts; Kansas City, Missouri and Kansas City, Kansas; Lincoln, Nebraska; Sioux City, Iowa; Wichita, Kansas; Indianapolis, Indiana; Providence, Rohode Island; Newport, Rhode Island; Fall River, Massachusetts; New Bedford, Massachusetts; Detroit, Michigan; Richmond, Virginia; Lexington, Kentucky; Leavenworth, Kansas; Quad Cities, Iowa and Illinois; Louisville, Kentucky; Oklahoma City, Oklahoma; Fort Wayne, Indiana; Savannah, Georgia; Tulsa, Oklahoma; Denver, Colorado; Fort Worth, Texas; and the following cities in Michigan: Ann Arbor, Battle Creek, Bay City, Flint, Grand Rapids, Kalamazoo, Lansing, Port Huron, Saginaw, and Muskegon. Additional licenses are now being formulated and will shortly be issued by the Secretary.

II. Relative importance of the dairy farming industry.

The following table indicates the proportion of the total cash income of farmers from farm production in Wisconsin, in Indiana, in Illinois, and in the United States for the year 1932, represented by the cash income from milk production:

	Wisconsin	Indiana	Illinois	United States
Total cash farm income	$158,756,000	$123,023,000	$204,099,000	$4,199,447,000
Cash farm income from dairy products	93,573,000	30,200,000	52,632,000	985,099,000
Percent cash farm income from dairy products is of total cash farm income	58.9	24.5	25.7	23.5

During the year 1931 the gross income of all farmers in the United States, derived from the sale of dairy products, was $1,614,394,000. This sum may be compared with the total value of products of the following industries during the same year:

Motor vehicles (not including motorcycles)	$1,567,526,000.00
Steel works and rolling mills	1,402,843,000.00

III. The parity price.

The "parity price", or the price of milk per hundredweight which Illinois, Wisconsin and Indiana producers should have received for milk sold at wholesale during August 1934, in order to give them a purchasing power for their milk equivalent to the purchasing power of a similar quantity of milk during the period from August 1909 to July 1414 (the base period specified in the Act) were: Illinois, $1.87; Wisconsin, $1.52; and Indiana, $1.93.

These parity prices are computed in the following manner: The average price of $1.57 received by Illinois producers for milk sold at wholesale during the base period, August, 1909 to July, 1914, is adjusted (1) by applying thereto the August, 1934, index of prices paid by farmers for commodities bought, being 123 per cent of the average of such prices during the base period, and (2) by applying to the resulting figure of $1.93 the index number of seasonal variation in prices, the August price being normally 3.3 per cent below the average monthly price in Illinois. The parity prices for Wisconsin and Indiana are computed in a like manner.

These parity prices, so computed, are probably lower than the true parity price for producers supplying the Chicago Sales Area, for two reasons: (a) sanitary regulations adopted since the base period have increased the relative cost of production and improved the quality of the commodity under consideration, thereby justifying a higher parity price: (b) the computation is based upon the prices received by Wisconsin, Indiana, and Illinois producers generally , not merely to producers supplying the Chicago Sales Area, who presumably, by virtue of their location advantage, were receiving a higher price during the base period than farmers generally in the states of Wisconsin, Indiana, and Illinois.

The dealers' buying price at Chicago, f.o.b. city for Class I milk testing 3.5 percent butterfat, when adjusted to parity levels as of August, 1934 was $2.28 per hundredweight.

This parity price is computed in the following manner: The average base period (August, 1909 to July, 1914) dealers' buying price per hundredweight, f.o.b. city, for milk testing 3.5 percent butterfat is adjusted: (1) by applying thereto the August, 1934 index of prices paid by farmers for commodities bought, being 123 percent of the average of such prices during the base period, and (2) by applying t the resulting figure the index of seasonal variation in prices of 99.3, the August price for this class of milk being normally .7 percent below the average of such prices for the year.

IV. Relationships between the prices received by farmers for milk in different uses, and intermarket price relationships of milk products.

a. Utilization of milk in the United States.

The milk produced in the United States is distributed among several uses, such as (1) milk for consumption as fluid milk, (2) milk for consumption as fluid cream, and (3) milk for conversion into and consumption as (a) butter, (b) cheese, (c) condensed and evaporated milk, (d) ice cream, (e) powdered milk, and (f) etc.

The following figures indicate the volume of milk and the butterfat content of such milk utilized in specified manufactured products and for consumption as milk in the United States during the year 1932*.

Product	Whole Milk used 1/ (1000 lbs.)	Fat in Milk used 1/ (1000 lbs.)
Factory product 2/		
Butter, creamery and whey	34,386,162	1,369,389
Cheese, American (whole and part skim)	3,801,107	136,534
Cheese, other than American, and cottage, pot and bakers'	1,082,352	36,667
Evaporated milk (whole)	3,611,101	132,361
Condensed milk (whole)	247,182	9,085
Ice cream (factory)	2,322,998	90,068
Powdered cream	1,553	61
Powdered milk (whole)	90,808	3,479
Malted milk	35,069	1,346
Totals used for factory products	45,578,332	1,778,990
Butterfat from whey cream	340,436	13,999
Butterfat from butter, etc. used in ice cream	482,964	18,739
Net used for factory products	44,754,932	1,746,652
Milk used by nonfarm 3/ population	31,991,461	1,225,273

1/ Based on the quantities of milk and cream reported as being received for use in these products. In addition, some fat remains in skim milk on farms, some is lost in spillage, stickage, etc. before being delivered, and some is excluded through rounding of fractional weights and tests upon delivery.

2/ These data differ in several respects from some published prior to November, 1932. The estimates of milk and butterfat required per pound of product are based chiefly on reports received for 1930 and 1931 showing quantities of milk and cream received by plants and the quantities of products made. Allowance has been made for duplication, principally in fat recovered from whey and in the use of such manufactured products as butter and evaporated or condensed milk in ice cream. It has been assumed that milk and cream used in ice cream made in homes and in small establishments not reporting as factories is included as consumption as fluid milk or cream.

3/ The quantities shown exclude consumption by the urban farm population. The quantities of milk here shown as consumed are those indicated by reports from local Boards of Health. Current estimates of sale of milk and cream from farms and current estimates of milk production by cows not on farms, if confirmed by further study, would indicate a lower level of milk consumption in the South, particularly in the South Atlantic States.

* Source: United States Department of Agriculture, Bureau of Agricultural Economics.

The following table indicates the proportion of the total milk used for fluid milk and for manufactured dairy products that was utilized in each product during the year 1932:

Product	Percentage of Total Milk Used in Each product
Factory product	
Butter, creamery and whey	44.4
Cheese, American (whole and part skim)	5.0
Cheese, other than American, and cottage, pot, and bakers'	1.4
Evaporated milk (whole)	4.7
Condensed milk (whole)	.3
Ice Cream (factory) 1/	2.4
Powdered cream	*
Powdered milk (whole)	.1
Malted Milk	*
Net used for factory products 1/	58.3
Milk used by non-farm population	41.7
Total	100.0

1/ Allowing for duplication resulting from inclusion of butterfat from whey cream used in butter and butterfat from butter, etc., used in ice cream.
* Less than one-tenth of one percent.

The demand for all milk is derived from the demand for milk in different uses. Milk is distributed among the different uses noted above, and the relative volume entering the various uses fluctuates according to changes in relative prices of the finished products engendered by changing demand conditions for the various products. Any activity that tends to establish and maintain normal relationships between prices of the various products, and that tends to raise and maintain the price of butterfat in one or more of its major uses, also tends to stabilize prices received by producers for milk in all uses.

b. Production of specified dairy products in major producing states.

The milk utilized in the manner indicated in the foregoing table is produced and processed in highly concentrated producing areas. This fact becomes evident upon consideration of the volume of production of specified manufactured products which is produced in major producing states, indicated in the following tables.

The following table indicates the proportion of the total United States production of creamery butter in 1932 that was produced in the

major producing states of Iowa, Minnesota, Nebraska, and Wisconsin:*

State	Amount (1,000 lbs.)	Percentage of U.S. Total
Iowa	219,531	13.0
Minnesota	281,659	16.6
Nebraska	85,660	5.1
Wisconsin	170,339	10.1
Total Four States	757,189	44.8
United States	1,694,132	100.0

* Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that 44.8 percent of the creamery butter manufactured in the United States is produced in the states of Iowa, Minnesota, Nebraska and Wisconsin.

The following table indicates the proportion of total production of cheese in the United States in the year 1932 that was produced in Wisconsin and New York:*

State	Amount (1,000 lbs.)	Percentage of U. S. Total
Wisconsin	302,439	51.5
New York	78,161	13.3
Total Two States	380,600	64.8
United States	587,627	100.0

* Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that 64.8 percent of the cheese produced in the United States in 1932 was produced in the States of Wisconsin and New York.

The following table indicates the production of evaporated milk in 1932 by specified states and the proportion such production was of total United States production of evaporated milk:*

State	Amount (1,000 lbs.)	Percentage of U. S. Total
Wisconsin	629,641	40.1
New York	99,341	6.3
California	203,554	13.0
Illinois	87,260	5.6
Ohio	80,300	5.1
United States	1,570,612	100.0

*Source: United States Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that the states of Wisconsin and California produced 53.1 percent of the total evaporated milk produced in the United States in 1932.

Manufactured dairy products, to a lesser extent cream, and to a still lesser extent fluid milk, are readily storable and transportable. In the case of cream and manufactured products, this factor of storability and transportability is reflected in the free flow of these products between markets, whereas high transportation costs, engendered by the bulk and perishability of fluid milk, render it uneconomical to transport fluid milk long distances. The free flow of these products between markets results in inter-market price relationships of such nature that the prices of these products tend to vary between markets only by the amount of transportation costs from one market to the next, plus the necessary additional handling charges other than transportation. In addition to the foregoing, a considerable volume of dairy products, chiefly evaporated milk, is exported from the United States, yearly, and a rather large volume of cheese, especially Swiss and Italian varieties, is imported yearly.

The above generalizations are substantiated by a consideration of the (1) receipts of milk, cream, butter and other dairy products at specified markets, and (2) between prices in different markets.

c. Receipts of specified dairy products at the principal markets.

The following table indicates the receipts of cream and milk at New York City and the metropolitan area by states of origin for the year 1933:*

State	Receipts	
	Milk 40-Quart units	Cream 40-Quart units
Connecticut	231,895	6,707
Delaware	34,887	3,292
Illinois	--	725
Indiana	2,648	17,355
Maryland	153,104	670
Massachusetts	133,206	868
Michigan	--	642
Missouri	--	800
New Jersey	3,337,760	23,474
New York	22,383,523	1,135,418
Ohio	4,910	30,248
Pennsylvania	5,383,028	200,578
Tennessee	496	5,600
Texas	--	200
Vermont	1,376,316	121,346
West Virginia	--	200
Wisconsin	--	25,338
Total	33,041,773	1,573,461

*Source: United States Department of Agriculture, Bureau of Agricultural Economics.

The following table indicates the receipts of milk and cream at Boston and the metropolitan area by states of origin during the year 1933:*

1933	Milk (40-Quart Units)	Cream (40-Quart Units)
Connecticut	--	200
Illinois	--	3,950
Indiana	--	22,563
Kansas	--	7,975
Maine	769,494	52,626
Maryland	--	1,700
Massachusetts	544,091	1,509
Michigan	--	45,302
Minnesota	--	21,882
Missouri	--	30,703
New Hampshire	670,569	19,954
New York	359,366	23,325
Ohio	--	15,433
Rhode Island	1,883	73
Tennessee	--	11,383
Vermont	3,376,147	228,457
Wisconsin	--	52,162
Pennsylvania	--	207
Total	5,721,550	539,406

*Source: United States Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The following table indicates the receipts of milk and cream at Philadelphia and the metropolitan area by states of origin during the year 1933:*

1933	Milk (40-Quart Units)	Cream (40-Quart Units)
Delaware	517,018	3,178
Dist. Columbia	--	150
Illinois	--	2,263
Indiana	340	44,434
Maryland	847,706	34,202
Michigan	--	1,400
Minnesota	--	5,925
Missouri	--	4,009
New Jersey	562,933	2,032
New York	--	2,121
Ohio	--	8,940
Pennsylvania	4,844,597	69,497
Texas	--	200
Virginia	5,548	4,434
West Virginia	9,367	2,620
Wisconsin	122	83,172
Total	6,787,631	268,577

*Source: United States Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

d. Exports and imports of dairy products.

The following table indicates the volume of domestic exports of butter from the United States, by countries of destination for the year ended June 30, 1933: 1/

Country	Amount (1000 pounds)
United Kingdom	1
Honduras	108
Panama	369
Mexico	128
Cuba	1
Haiti, Republic of	291
Other West Indies 2/	214
Columbia	12
Peru	14
Venezuela	45
Philippine Islands	83
Other Countries	120
Total	1366

1/ Source: Yearbook of Agriculture, 1934.
2/ Excludes Bermudas.

Domestic exports of cheese from the United States, by countries of destination, for the year ended June 30, 1933, were as follows: 1/

Country	Amount (1000 pounds)
Panama	640
Mexico	69
Canada	44
Honduras	50
British Honduras	25
Cuba	56
Virgin Islands	59
Haiti, Republic of	26
Other West Indies 2/	72
China	36
Philippine Islands	150
Other Countries	119
Total	1346

1/ Source; Yearbook of Agriculture, 1934.
2/ Excludes Berumdas.

The following table indicates the domestic exports of condensed milk during the year ended June 30, 1933, by countries of destination: 1/

Country	Amount (1,000 pounds)
Total Europe	31
Cuba	360
Philippine Islands	1382
Hong Kong	1325
China	699
Mexico	224
Jamaica	1073
Honduras	282
Costa Rica	129
Venezuela	176
Other countries	666
Total	6347

1/ Source: Yearbook of Agriculture, 1934.

The following tables indicates the exports (domestic) of evaporated milk from the United States, by countries of destination, for the year ended June 30, 1933: 1/

Country	Amount (1,000 pounds)
United Kingdom	926
Other Europe	31
Total Europe	957
Philippine Islands	19,598
Panama	4,616
Peru	242
China	555
British Malaya	628
Cuba	179
Japan	184
Mexico	700
Netherland West Indies	1,373
Netherland East Indies	879
Siam	1,847
Newfoundland and Labrador	503
Other countries	1,405
Total	33,666

1/ Source: Yearbook of Agriculture, 1934.

Imports of butter into the United States, by countries of origin, for the year ended June 30, 1933, were as follows: 1/

Country	Amount (1,000 pounds)
United Kingdom	129
Denmark	124
Other Europe	106
Total Europe	359
New Zealand	547
Canada	64
Other countries	21
Total	991

1/ Source: Yearbook of Agriculture, 1934.

Imports of cheese into the United States, by countries of origin, for the year ended June 30, 1933, were as follows: 1/

Cheese, Emmenthaler (Swiss)

Country	Amount (1,000 pounds)
Switzerland	10,492
Denmark	518
Germany	420
Other countires	874
Total	12,304

Cheese other than Swiss

Italy	30,398
France	3,775
Netherlands	2,177
Switzerland	1,516
Other Europe	3,936
Total	41,802
Canada	1,109
Other countries	708
Total	43,619

1/ Source: Yearbook of Agriculture, 1934.

e. Intermarket price relationships.

The free flow of manufactured dairy products between different markets in response to price changes engendered by changing supply and demand conditions results in decidedly close correlation between the prices of dairy products in different markets. The relationship between the wholesale price of 92 score butter at New York City and Chicago, Illinois, is shown in Figure 3. If the wholesale price of 92 score butter at New York should become so high relative to the wholesale price

of 92 score butter at Chicago that shippers of butter could make a greater profit by shipping their butter to New York than to Chicago, they would do so, increasing supplies on the New York City market and thereby tending to reduce prices in New York City relative to prices in Chicago, and vice-versa if the wholesale price of 92 score butter at Chicago should become such that it would be more profitable to ship butter to Chicago rather than New York City.

In addition to the above intermarket price relationships, the supply of the raw material, butterfat, is rather readily interchangeable between products, so that the prices received by producers of butterfat in all uses tend to be markedly inter-related. These producer price inter-relationships are due to the fact that farmers can and do shift their disposal of butterfat from one use to another as price conditions warrant, thereby tending to keep the farm price of butterfat in any one of the several uses closely associated with the farm prices of butterfat in all other uses.

These intermarket price relationships are evidenced by a consideration of the relationships between (1) the index of the United States average farm price of butterfat and the index of the United States farm price of milk sold at wholesale (such indices are the percentage each yearly average price is of the 1910-14 average of the yearly average prices, or in other words, the 1910-14 average of the yearly average prices = 100), (2) the index of the United States average farm price of butterfat and the index of the United States average farm price of butter (in both cases the 1910-1914 average of the yearly average prices = 100), (3) the average monthly farm prices of butterfat in the United States and the average monthly wholesale prices of 92 score butter at New York City and Chicago, and (4) the United States farm price of butterfat and the prices paid producers for milk at condenseries, such milk being utilized in the manufacture of condensed and evaporated milk.

The relationships noted in (1), (2), (3) and (4) above are depicted graphically in figures 1, 2, 3 and 4 to 11 respectively (figures 4 to 11 depicting the relationship between the United States average farm price of butterfat and the price paid producers at condenseries (processing plants engaged in the manufacture of condensed and evaporated milk) by geographical divisions.) The marked relationships noted above obtain because of the interchangeability of the supply of the raw material, butterfat, and substantiate the contention that any regulation that tends to stabilize and raise the price of butterfat in any one of the major products in which butterfat is utilized, also tends to stabilize and raise the price of butterfat in all uses.

The prices received by producers for milk used for consumption as fluid milk are also closely related to the prices received by producers for butterfat used in the production of manufactured dairy products. These close relationships arise from the fact that it is impossible to forecast accurately the daily requirements of fluid milk in any milk market, so that milk intended for fluid distribution finds its way into manufactured products; and the fact that the price relationships between fluid milk and milk for manufacturing purposes are so close indicate that the interchange-

ability of supply of milk for fluid distribution and of milk for manufacturing purposes is of such nature that fluid milk prices in any given area are subject to the same supply and demand forces on a national scale as those to which manufactured products are subject.

The demand for fluid milk in any given market varies markedly from day to day. So important is this factor that producers must supply a quantity at least 15 percent in excess of the average daily consumption in the market, a margin of safety, in order to meet unpredictable daily variation in demand. In addition, in most milk markets an amount in excess of the daily sales plus the margin of safety is usually produced and brought to the distributor's plant. This milk is collected from the farmer and is combined andprocessed in the distributor's plant, so that the milk of any producer so handled is indistinguishable from that of any other producer. In addition, it is impossible to determine at this point what portion of the milk in the distributor's plant will finally be consumed as fluid milk in that market, or what portion of the milk will be converted into manufactured dairy products and perhaps sold in distant markets. It is quite common for distributors to have "route returns", that is, milk that is bottled for fluid distribution, is taken out on the delivery route, and, finding no market, is utilized in manufactured dairy products.

These statements are evidenced by intermarket price relationships, and by the relationships between prices of fluid milk and milk for manufacturing purposes. If fluid milk prices in any given market were not affected by the prices of milk in other distant markets and by the price of butterfat in all other uses and did not in turn affect the price of milk and butterfat in other distant markets and in other uses, there would be little reason to expect a close relationship between the prices received by producers of fluid milk and those received by producers of milk for manufacturing purposes.

However, the prices received by producers for fluid milk testing 3.5 percent butterfat used for fluid consumption are closely related to the United States average farm price of butterfat. These relationships are not restricted to a country-wide consideration; the prices received by producers in every market area, whether surplus or deficit, bear these marked relationships to the United States average farm price of butterfat. Since it was demonstrated that the prices received by producers for butterfat entering into specific uses are closely related to the United States average farm price of butterfat, it naturally follows that the prices received by producers for milk used for fluid consumption are closely associated with the prices received by producers for butterfat entering all other uses.

The relationships noted above are graphically depicted in figures 12 to 21, inclusive, which show the relationship between the United States average farm price of butterfat and the prices paid producers for 3.5 percent milk used for fluid consumption in the markets of Hartford, Connecticut; New York City, New York; Boston, Massachusetts; Washington, D. C.; Los Angeles, California; Baltimore, Maryland; Seattle, Washington; Richmond, Virginia; Milwaukee, Wisconsin; and Louisville, Kentucky.

The relationships noted above obtain because farmers will, over a period of time, shift their method of disposal of the milk they produce as price conditions warrant. If an adequate supply of fluid milk is to be assured in any given market, the prices received by producers must be sufficient, over a period of time, to cover the additional costs incurred in the production of high quality milk for consumption as fluid milk. On the other hand, the existence of abnormal differentials between the price of fluid milk and milk for manufacturing purposes will cause producers to shift their marketing in the direction of the more favorable prices, continuing the process until normal price relationships are restored.

f. Effect of price fluctuations in unstabilized markets on interstate commerce.

Disturbed market conditions arising from price cutting and unfair trade practices have been prevalent in the Chicago market. Such practices have been accompanied by discrimination among producers and ruinous prices to them for their product, leading to serious producer strikes with consequent loss to producers, distributors, and the consuming public. The most recent of such producer strikes occurred in February, 1934, and involved approximately 18,000 producers supplying the Chicago market. This strike lasted for a period of five days, was accompanied by violence, and cut off temporarily most of the fresh milk supply from the Chicago metropolitan area.

As has been pointed out, the economic depression has curtailed the purchasing power of the consumers of dairy products, and in an effort to capture for themselves a larger share of the restricted market, distributors of milk have engaged in price wars and other destructive competitive practices. These practices affect not only the local market but also exert an influence upon the price of milk in all of its uses in other markets throughout the nation. The influence of these local practices is widespread because of the relationship which exists between the prices of milk in its various uses and because of the relationship between the prices of manufactured dairy products on the markets throughout the country. The consequences of a price war in a local market may be analyzed as follows:

The effect of price fluctuations on local markets. A decrease in the price paid to producers of market milk, (milk consumed in fluid form), because of a price war, results in the sale of a larger quantity of the local milk supply for processing into manufactured products, and a corresponding increase in the quantity of products manufactured. This shift in the disposition of the milk supply is due to the following facts:

(1) The differential between the price paid to the producer of market milk and the price paid to the producer of manufacturing milk normally tends to equal the difference between (a) the cost of transporting fluid milk, plus the cost of producing such milk in conformity with the applicable health requirements of urban centers, and (b) the cost of transporting dairy products plus the cost of producing manufacturing milk.

(2) If price conditions warrant, because such price differentials are less than the difference in cost of transportation and production of the two types of milk, producers will abandon the production of market milk to produce manufacturing milk.

The increased output of dairy products in the local market tends to cause a decrease in the price of butter and other manufactured dairy products. The pressure of this abnormal quantity of manufactured dairy products in the local market is felt in other markets becuase inter-market price relationships are such that the price of manufactured dairy products tends to vary between markets only by the transportation and handling costs, and the processor who purchases his raw material at a lower cost is able to ship his product profitably to more distant markets. The disturbance of the price balance between the local market and interstate markets serves also to check the importation of manufactured dairy products into the local market.

The effect of price fluctuations on interstate markets.

The added influx of butter and other dairy products into interstate markets from unstabilized markets increases the available supply of such products in these markets. Because of inter-market price relationships, the prices of butter and other dairy products on all markets tend to decline due to the increased supply and unchanged demand until price levels equivalent to those of the fluctuating market plus transportation differentials are reached.

Lower prices of manufactured dairy products result in the payment of lower prices to the producers of manufacturing milk because (1) the prices of butter and other dairy products are important factors in the determination of the price of butterfat, and (2) because the prices of butterfat in all of its uses are important factors in determining the price of manufacturing milk. The strikingly close relationships, both in national and local markets, between the price of butter and other manufactured products and the price of butterfat demonstrate these facts.

Finally, a lower price for manufacturing milk results in a lower price for market milk because producers can, and do, shift the disposition of their milk to distributors so that the difference in price between the two kinds of milk comes to equal the added cost of preparing market milk.

General effect of price fluctuations on all markets.

Thus price cutting on local markets results in (a) an increase in the supply of butter and other dairy products in the markets throughout the country, and (b) a decrease in price paid to producers of manufacturing milk and to producers of market milk. The effect of these local practices on the national market for manufactured dairy products and upon the price of milk on other markets is emphasized when these practices occur simultaneously in many local markets.

g. Movement of dairy products to and from the Chicago Sales Area.

A substantial portion of the milk received in the Chicago Sales Area is produced in other states, principally Wisconsin and Indiana. Approximately 40 percent of the whole milk marketed in the Chicago Sales Area origniates outside of the state of Illinois. The cream requirements of the Chicago Sales Area were supplied in 1933 by 14 states, only 28.8 percent of such cream being produced in the state of Illinois.

During the year 1933, the total amount of butter received and handled through the Chicago market was 261,001,289 pounds. The estimated population of the Chicago Sales Area is 4,195,289 persons. On the basis of a per capita consumption of butter of 18.14 pounds per annum (the national average), the population of the Chicago Sales Area consumed approximately 76,000,000 pounds of butter during the year 1933. Approximately 185,000,000 pounds of butter handled through the Chicago market remained to be consumed outside the Chicago Sales Area. The population of Illinois outside the Chicago Sales Area is 3,457,748 persons. With the same per capita consumption of butter, such persons consumed approximately 52,700,000 pounds, a large proportion of which presumably was not handled through the Chicago Sales Area and is not represented in the foregoing figure of 185-000,000 pounds. It is a reasonable conclusion from these figures that substantially more than one-half of the butter handled through the Chicago Sales Area is sold in other states.

The Chicago Sales Area includes, in addition to the City of Chicago, the metropolitan area within a radius of thirty-five miles of the city limits, and therefore includes portions of the states of Wisconsin and Indiana. Part of the milk distributed to consumers residing in the Sales Area situated in Wisconsin and Indiana is supplied by distributors whose plants are located in Illinois.

The following table indicates the receipts of cream at Chicago and the metropolitan area, by states of origin, for the year 1933:*

State	Receipts of Cream 40 quart units
Arkansas	6,518
Illinois	158,014
Indiana	19,298
Iowa	6,160
Kansas	122
Kentucky	8,320
Michigan	3,104
Mississippi	1
Missouri	26,382
Ohio	5,157
Oklahoma	180
Tennessee	248
Texas	2
Wisconsin	314,817
Total	548,323

*Source: United States Department of Agriculture, Bureau of Agricultural Economics.

V. The Provisions of the License.

The License is designed to accomplish the following purposes:

(1) To fix a fair and reasonable price which producers of milk shall receive for milk sold by them and to insure the receipt of such price by them. Inasmuch as milk sold by distributors for consumption as whole milk commands a higher price on the market than milk sold in the form of cream, which in turn commands a higher price than milk sold in the form of butter or other manufactured products, said License classifies milk in accordance with the several uses made thereof and fixes a price to be paid to producers for each of the several use classifications depending upon the ultimate use actually made of such milk. The fixation of prices upon the basis of use made of milk by distributors benefits all distributors, since it permits them to pay a price for their milk which is correlated with the prices received by them for such milk in the form in which it is sold. The price for each class of milk, fixed by said License, complies with the provisions of the Act in that it approaches the parity price of milk as defined by the Act, in so far as the current consumptive demand for milk in the Chicago Sales Area and the country at large permits.

(2) To assure to all producers a uniform price for their milk, irrespective of the actual use of such milk made by the particular distributor whom each producer supplies. Because of the provisions in said License, classifying the prices of milk purchased from producers on the basis of the ultimate use actually made of such milk by distributors, producers supplying an equal quantity of milk of the same quality to different distributors would receive different prices for their milk if each distributor were to pay the producer supplying him on the basis of his individual use of milk, In order to avoid this inequitable result and at the same time to require each distributor to pay for milk purchased by him only at prices determined on the basis of the actual use made of such milk by him, the License provides for an equalization pool which operates as follows: Each distributor is required to report monthly the actual uses made by him of all milk purchased by him from producers. The average value per hundredweight of delivered base milk purchased by all distributors (on the basis of the use of such milk by all distributors) is then determined by dividing the total purchase price owing from distributors by the total quantity of delivered base milk purchased by them. The License required each distributor to pay producers for milk not in excess of producers' delivered base, on the basis of such average price. This results in requiring certain distributors to pay more for milk purchased by them than the use value of such milk to them; whereas other distributors pay less for the milk purchased by them than its use value to them. The License, therefore, further provides for an adjustment account whereby payments for milk by distributors are equalized on the basis of the actual use value to each distributor of the milk purchased by him. Thus each distributor, the value of whose milk (based upon his use thereof) is not as great as the average value of all milk used in the market (based upon the average use thereof by all distributors) is reimbursed by payments from other distributors, the value of whose milk (based upon their use thereof) is in excess of the average value of all milk used in the market.

a. Cost of Milk to Distributors.

According to the provisions of the License, distributors are required to pay the following prices for milk, of 3.5 per cent butterfat content, purchased from producers, delivered f.o.b. distributor's country plant, platform, or leading station located within 70 miles from the City Hall in Chicago, Illinois;

Class I - $2.25 per hundredweight.

Class II - For each hundred pounds of milk, to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III - For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable marketing agreement and/or license, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned agreement and/or license.

The above prices apply to milk purchased outside the 70 mile zone, except as provided in Section B of the License (Adjustments in Cost of Milk to Distributors).

By amendment to the License, made effective July 18, 1934, a clause stating that "no distributor shall purchase milk from any producer unless such producer authorizes such distributor, with respect to payments for milk purchased from such producer, to comply with the prices and provisions of the License" was deleted. The removal was justified because it served no purpose in protecting producers inasmuch as the License also provides that the prices to producers supersede terms of contracts not consistent with the terms of the License.

The term "delivery period" means the period from the 1st to, and including, the last day of each month.

Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Chicago Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption

within the Chicago Sales Area and for the manufacture of ice cream mix and ice cream for consumption in the Chicago Sales Area. The term "cream" is deemed to include "ice cream mix and ice cream."

Class III milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I and Class II milk.

The price set for Class I milk of $2.25 per hundredweight is slightly lower than the August 1934 parity price of $2.28 per hundredweight for Class I milk testing 3.5 per cent butterfat. According to the License made effective February 5, 1934, the Class I price was set at $1.75 per hundredweight for milk testing 3.5 per cent butterfat, which price was established in accordance with competitive and historical conditions in the market. Because of the general strengthening of the dairy market, an increase in the Class I price to $2.00 was warranted in the Amended License made effective June 1, 1934. A subsequent increase, made effective by amendment of July 1, 1934, set the price at $2.25.

The amendments with respect to price noted above were made after careful consideration of supply and demand conditions in the Chicago Sales Area. Throughout the summer, severe drought conditions in the area supplying the Chicago Sales Area with milk have adversely affected production conditions and materially increased the costs of feed. In order to be assured of a supply of milk sufficient to meet market needs, it was necessary to either increase the prices received by producers for Class I milk or to secure milk from more distant sources of supply outside of the present Chicago milk shed. Such expansion of the shed might result in milk being drawn from uninspected areas with consequent danger to health. In addition, expansion of the milk shed would be unduly expensive, in that the price would tend to rise high enough to induce producers outside the shed to undergo the expense involved in producing milk of acceptable quality on a short time basis. Furthermore, due to the bulk and perishability of fluid milk, which results in relatively high transportation costs for such milk, it is economical to secure the needed supplies of such milk as near to the markets as possible.

Milk which is available for consumption as whole milk must be produced under highly sanitary conditions in accordance with local health regulations. The cost of producing such milk is therefore substantially higher than the cost of producing milk used in the manufacture of such products as butter, cheese, condensed and evaporated milk, and a higher price to the producer of such milk is economically justified. However, such prices must be maintained in a reasonable relationship to the prices received by producers of manufacturing milk. If a price for Class I milk were fixed at an unreasonably high figure above the prices received by producers for manufacturing milk, producers who had formerly produced milk for manufacturing purposes only would equip their farms for the production of high quality milk. This would tent to subject the fluid milk market to serious pressure through substantially increasing the market surplus, and would tend to result in a lower average price for all producers in the market.

By amendment to the License, made effective August 22, 1934, it is provided that no distributor shall sell milk to, or purchase milk from, another distributor for Class I purposes at less than the Class I price specified in the License. This amendment was necessitated by the practice of certain distributors who ceased buying milk directly from producers, and obtain their supply from plants located some distance from the sales area. Furthermore, in the absence of such amendment the selling distributor would be obligated to pay its producers the license price which, in some instances, was in excess of the price which it received from the purchasing distributor under outstanding contracts. Said amendment was found necessary in order to permit and assure compliance by the distributor which purchases directly from producers. This amendment is important in the administration of, and in the securing of compliance with, the License.

The average prices paid producers in Illinois, Wisconsin and Indiana for milk purchased for manufacturing purposes by condenseries during 1932 and 1933 and during the first seven months of 1934, respectively, were as follows:

Year	Illinois	Wisconsin	Indiana
1932	$ .91	$ .92	$ .89
1933	1.02	1.05	.99
1934			
January	$1.00	$1.00	$ .95
February	1.12	1.11	1.15
March	1.15	1.14	1.15
April	1.05	1.10	1.06
May	1.10	1.10	1.20
June	1.19	1.14	1.12
July	1.13	1.14*	1.09
Average first seven months of 1934	1.11	1.10	1.10

*Preliminary

The differential between the above prices and the price provided in the License for Class I milk represents, (1) a fair and reasonable premium to compensate the producer for the additional costs of producing high quality milk, and (2) an allowance to compensate producers for the higher costs of transporting fluid milk, which is bulky and perishable, and (3) an allowance to compensate the producer for maintaining a relatively stable volume of production of high quality milk somewhat larger than the average volume actually sold as Class I milk in the market, this volume in addition to actual average sales being required to meet daily fluctuations in the demand for fluid milk. The price for Class I milk provided in the License is higher than that prevailing before the License was put into effect. The License was necessary in order to maintain higher prices, and to provide the machinery for further increasing such prices when economic conditions warrant such increases.

The Class II price applies to milk used by distributors to produce cream for sale or distribution as cream for consumption within the Chicago SalesArea and for the manufacture of ice cream mix or ice cream for consumption in that area, and is tied directly to the wholesale price of 92 score butter at Chicago. The market for such milk, derived from the excess milk of local producers over and above the Class I requirements of the market, is subject to pressure from distant cream producing areas; for the cream equivalent of milk used to produce cream, etc., by reason of its lesser bulk, can be shipped into the Sales Area profitably from distant producing areas. In order to maintain a reasonable share of the cream market for local producers, it is essential that the Class II price be maintained at a level not unreasonably high in relation to the prices at which cream supplied by distant producing areas is available in the Sales Area. The prices received for cream in distant producing areas depend upon the prices of manufactured dairy products. Due to the fact that these products are readily storable and transportable, the price of milk for manufacturing purposes is set by national supply and demand forces outside the scope of the Chicago License. It becomes necessary, therefore, to maintain Class II prices in the Chicago area in relationship with the prices secured by producers of manufacturing milk generally. Since the production and price of manufactured dairy products vary seasonally, it is necessary to allow Class II prices to vary rather than to be fixed throughout the year. By the formula method of computation, changes in the Class II price are allowed in relationship to the prices of manufactured products gemerally.

In addition to the foregoing considerations in regard to the Class II price, it is rather generally recognized that relatively small changes in the retail price of fluid milk are associated with less than proportional changes in the volume of fluid milk consumed, while cream is a quasi luxury, and a change in the retail price of cream is associated with a more than proportional change in the volume of cream consumed. Thus, within reasonable limits, the gross income of producers (other things remaining the same) is increased by keeping cream prices relatively low and thereby engendering a large consumption of cream.

Provision is made in the License whereby any distributor not selling whole milk may purchase milk for Class II purposes from producers who do not have established bases, provided such distributor pays the producer the Class II price. By this arrangment, such producers are assured of prices for their milk in accordance with the uses made thereof.

A further provision with respect to Class II milk is that no distributor shall sell to or purchase milk or cream from distributors for Class II use, as defined in the License, at a price, per pound of butterfat, lower than 2 cents per pound of butterfat above the price specified for Class II milk, for each pound of butterfat in milk purchased from producers and classified as Class II milk. If such milk or cream is sold or purchased in the form of ice cream mix or ice cream, a reasonable charge may be added for the ingredients other

than milk or cream purchased for Class II use. The inclusion of this provision was deemed necessary for effective enforcement of the Class II price: Plants not operating as regular distributors in the market, selling only a portion of their milk for Class II purposes, made difficult the accurate determination of the prices actually paid, for that portion of the milk used for cream purposes.

The price of Class III milk, which is the milk in excess of Class I and Class II sales in the market, is also tied directly to the price of butter, since the manufactured products derived from such excess milk must be sold in direct competition with butter and other manufactured products, the prices of which are determined by national supply and demand forces (due to the fact that such manufactured products are readily storable and transportable) outside the scope of the License. This principle is equally true in instances where the Class III price is established pursuant to an applicable marketing agreement and/or license issued pursuant to the Agricultural Adjustment Act, for any of the products used in this classification.

On the other hand, the use for manufacturing purposes of milk produced under rigid health regulations and intended for fluid consumption, is economically unsound, and it is desirable that the surplus quantities of such milk which are diverted to manufacturing channels be kept as low as possible. A relatively low Class III price, therefore, is justified as deterrent to the production of surplus milk in excessive quantities.

The foregoing considerations and competitive factors impose limitations upon the prices which may justifiably be fixed and maintained under the License. As prices of dairy products rise generally, the prices for Class I, Class II, and Class III milk will be increased and will further tend gradually to approach the parity price.

b. Adjustments in payments to producers.

1. Adjustments relative to transportation costs.

The License carries the following provision relative to adjustments made in payments to producers on the basis of transportation costs outside of the seventy (70) mile zone:

If any producer has delivered milk to a distributor at a country plant, platform or loading station, located more than 70 miles from the City Hall in Chicago, such distributor shall make a deduction from the payment to be made to producers with respect to such producers' delivered base, of 1¢ per hundredweight for each 10 miles or part thereof in excess of 70 miles, but not in excess of 100 miles from the City Hall in Chicago, and 1¢ per hundredweight for each 15 miles or part thereof in excess of 100 miles from the City Hall of Chicago:

The price to be paid producers as specified in the License is, therefore, an f. o. b. country station price within the 70-mile zone, with a deduction from the producers' price when milk is purchased beyond

the limits of the 70-mile zone. The Chicago Sales Area is very large, including the City of Chicago, Illinois, and all of that territory lying within thirty-five miles of the corporate limits of Chicago. Besides the City of Chicago, a number of small towns and cities are included in the Chicago Sales Area. The License therefore does not attempt to regulate transportation relationships between distributors who distribute milk in the several parts of the Chicago Sales Area or who receive milk anywhere within the 70-mile zone. To do so would entail extremely detailed determinations which would be exceedingly difficult to establish and maintain, thereby unduly incfeasing the cost of regulating the prices to be paid producers supplying the Chicago market with milk.

The transportation differentials for milk purchased outside the 70-mile zone represent the additional cost of transporting milk from without the 70-mile zone to the 70-mile zone, and are determined with reference to and based upon the less than carlot rates charged by railroads hauling milk to the Chicago Sales Area and are therefore fair and reasonable. They are not in any sense representative of the cost of transporting milk from said producers outside the 70-mile zone to the Chicago Sales Area, and are not intended to represent such cost of transportation, due to the fact that the price to be paid to producers is specified as an f. o. b. country station in the 70-mile zone, not an f. o. b. city price. The allowance of a deduction representative of the total cost of shipping milk from within or without the 70-mile zone would necessitate the fixing of f. o. b. city prices in the License. With prices fixed f. o. b. country stations within the 70-mile zone, the allowance of total transportation costs in the Chicago Sales Area to distributors purchasing milk outside the 70-mile zone, without allowing distributors within the 70-mile zone to make deductions from the producers' price representative of the cost of transporting the milk from the point within the 70-mile zone where such milk was purchased to the Chicago Sales Area would discriminate seriously against distributors purchasing milk within the 70-mile zone. Therefore, since producers' prices are fixed f. o. b. country station within the 70-mile zone, distributors are allowed to make transportation deductions from producers' prices only on milk purchased outside the 70-mile zone.

2. Adjustments relative to the butterfat content of milk purchased from producers.

The License carries a provision relative to an adjustment in the payments to producers on the basis of the butterfat content of the milk purchased from producers, as follows:

If a producer has delivered to any distributor during any delivery period, milk having an average butterfat content other than 3.5 percent, such distributor shall pay to each such producer for each 1/10th of 1 percent of average butterfat content above 3.5 percent, or shall deduct for each 1/10th of 1 percent of average butterfat content below 3.5 percent an amount per hundredweight as follows:

(1) On delivered base milk 4¢ per hundredweight.

(2) On all of milk delivered in excess of delivered base an amount equal to 1/10th of the average price per pound of 92 score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased.

The greater portion of the milk sold by distributors in the Chicago Sales Area tests approximately 3.5 percent butterfat. However, the milk of individual producers as delivered to distributors' plants varies markedly, some producers delivering milk testing more than, and other delivering milk testing less than, 3.5 percent butterfat content. The test of the milk delivered by different farmers varies because of differences in breed of the cows producing the milk, differences in feeding practices, and other factors. The milk from individual producers in the course of being processed is mixed and intermingled, so that the average test of the milk when finally sold closely approaches 3.5 percent butterfat. The payment of the differential of 4¢ per each 1/10th of one percent butterfat in milk in excess of an average of 3.5 percent delivered by the individual producer represents a reasonable compensation to such producer for producing milk testing higher than 3.5 percent in butterfat content and is necessary in order that a supply of 3.5 percent milk necessary for the requirements of the market will be assured. Similarly, the deduction of 4¢ per each 1/10th of one percent butterfat below an average of 3.5 percent butterfat allows the distributor to make deductions from the price established on the basis of an average butterfat test of 3.5 percent, so that the price paid for low test milk is more closely associated with the value of such milk to the distributor.

The adjustment provided for with respect to the butterfat test of excess milk is directly related to the wholesale price of 92 score butter at Chicago. Milk in excess of delivered bases is used in the manufacture of butter, cheese, evaporated and condensed milk, and other manufactured dairy products. The prices which distributors can afford to pay for milk entering the uses noted above is dependent upon the prices said distributors receive for manufactured products, the prices of which are set by national supply and demand forces outside the scope of the license. Milk entering manufactured products use is genrally purchased from farmers on the basis of butterfat content, and the differential merely represents the higher value of high test milk as compared to low test milk for manufacturing purposes.

The adjustments provided for on delivered base milk as noted above have prevailed for a number of years in the Chicago market, and the inclusion of such a provision in the license merely continues a practice that had prevailed and was widely accepted as fair and reasonable immediately prior to and for several years preceding the issuance of the license.

c. Deductions in payments to producers.

The license contains provisions whereby each distributor deducts 1¢ per hundredweight from payments to producers for all milk, said deduction of 1¢ per hundredweight to be paid to the market administrator and to be used by him to meet his cost of operation.

The license, which is designed to accomplish the purposes set forth in the preceding pages, is administered by a market administrator. The deduction of 1¢ per hundredweight represents a reasonable charge for administration of the license, and furthermore, it is provided that the market administrator may at any time, in his discretion waive the payment of such deduction, provided such waiver is equal among all producers.

A further deduction from the payments to producers not members of the Pure Milk Association equal to the deduction authorized by the members of the Pure Milk Association for furnishing benefits to such members, but in no event in excess of 3¢ per hundredweight, is authorized by the license. The deductions so made from non-members of the Pure Milk Association are paid to the market administrator by distributors, and the market administrator shall use such funds in securing for such non-member producers, market information, supervision of weights and tests, and guarantee against failure by distributors to make payments for milk purchased and other similar benefits.

The services noted above are necessary in order that the market for milk in the Chicago be placed on a stable basis. The supervision of weights and tests assures each producer that he will be paid for the actual weight and butterfat content of the milk he delivers, and assures distributors that no one of them will be able to secure an advantage in the market due to inaccurate weighing and testing of milk.

The guarantee of producers against loss, by the failure of financially incompetent distributors to pay for milk purchased from them, is necessary in order that the producer be protected at all times and that he be assured of returns from milk sold by him comparable to the returns secured by other producers.

The Pure Milk Association has for several years rendered the services noted above to its members, and in order to approximate the cost of rendering such services to non-members, the cost of rendering such services on the part of the Pure Milk Association was taken as a guide in determining the deduction to be made from non-members.

Furthermore, the license contains a provision whereby the market administrator, may, in his discretion, waive any part or all of the foregoing deduction, provided such waiver shall be equal among all such non-member producers.

Audit of the market-administrator's books discloses that the market administrator has rendered the services to non-members specified in the license.

d. Classification of sales and the market pool.

(1) Classification of sales and the market pool as it applies to the market as a whole.

The foregoing considerations, discussed in connection with the price schedule, also furnish the justification for the classification of milk sales in accordance with ultimate use. In addition, the economic fact is that a specified quantity of milk retails for a higher price when sold as Class I milk (whole milk) than when sold as Class II milk (cream, etc.) which in turn retails for a higher price than the same quantity of milk sold as Class III milk (butter and other manufactured products).

Some surplus production over and above the fluid sales in the market is inevitable during all seasons of the year. Moreover, milk production varies from day to day and from season to season upon individual farms and for the market as a whole. Sales and consumption of milk and cream, while varying less than production from season to season, nevertheless show marked variation from day to day, and also to some extent from season to season. This variation extends to the individual delivery routes of each distributor, causing "route returns" and "route shortages". The sales of milk and cream by the various distributors in the market in relation to each other are undergoing changes at all times. Under these conditions it is impossible for the individual producer or for any group of producers to correlate production to the fluid demand of a particular distributor or of the market as a whole. So important are these factors that if a distributor were free to order in advance his requirements for Class I milk he would average from 10 to 20 per cent surplus. It is, therefore impossible to avoid having a limited supply of surplus milk in the market at all times.

An outlet must be furnished for this surplus milk, and the burden of the surplus should be distributed fairly and equitably among the producers. As indicated above, the distributor must sell his manufactured milk products in competition with manufactured milk products generally. Similarly, cream prices are subject to pressure from cream shipped in from distant producing areas, the prices of which directly affect the prices at which distributors can sell the cream derived from the milk of producers in the milk shed.

If all milk were paid for on a flat price basis, the individual distributor would tend to restrict his purchases to his fluid requirements. A price high enough to compensate the producer for his relatively high cost of production would tend to discourage the distributor from manufacturing butter and other products for sale under such competitive conditions, and would encourage him to import his cream from beyond the borders of the milk shed. The burden of the surplus production would be shifted by the distributor to individual producers in a disproportionate manner, the distributor declining to accept milk from some producers while taking the entire quantity of others. Under such circumstances, the prices paid by distributors tend to become depressed toward the level of butter prices, without regard to quality or cost of production.

Classification of sales of milk in accordance with its ultimate uses enables the distributor to accept all milk delivered to him by producers by authorizing payment for milk used to produce cream and for manufacturing purposes at prices which are reasonably correlated with the competitive prices which the distributor must meet.

With sales of milk classified according to ultimate use, the market pool is required in order that each producer may be given a fair proportion of the fluid market. The price paid to each producer must be based upon the average sales and usings in the various classes of all distributors in the market. Otherwise, each producer would be paid according to the actual use made by the particular distributor to whom his milk was delivered, which would rarely coincide with the average use of all distributors in the market. This requirement that each producer be paid upon the basis of the average usings of the entire market, necessarily leads to the further provisions relating to adjustments as between distributors.

(2) The adjustment in cost of milk to distributors.

The adjustment features of the market pool plan included in the Chicago License are designed, with respect to the cost of milk to distributors, (1) to insure that Class I milk be drawn from sources nearest the market, thus effecting economics which will accrue to the benefit of producers and (2) to allow reasonable charges which will reflect the cost of transporting milk to the market. Similarly, where sales of Class I and Class II milk are made by distributors outside of the Sales Area, adjustments are allowed for the differences (as determined by the market administrator) between Class I and Class II prices and the prices where such milk or cream is sold. These features of the License provide, moreover, with respect to equity among producers, (1) that the advantage of location of individual producers shall be recognized, and (2) that the economies mention above shall be reflected through the blended price for delivered bases.

(3) Classification and the market pool as it applies to distributors selling less than 15 per cent of their total receipts of milk for Class I purposes.

By the operation of an equalization pool, producers share alike in the higher prices for Class I sales and the lower prices for manufacturing milk. Such an arrangment is justifiable when all producers participating therein are compensated in an equitable manner. The pool plan in the Chicago market has been modified by the License so as to exclude from adjustments distributors selling less than 15 per cent of their total receipts of milk for Class I purposes. This action was necessitated by the practice of certain manufacturing distributors, located within shipping distance of the area but not normally included in the market, who sold small quantities of whole milk in the Sales Area so that they could share in the equalization pool, and thereby obtain a higher price to their members, to the disadvantage of producers regularly supplying the market with its milk requirements.

The base-surplus plan.

The primary aim of the base-surplus plan is to encourage production at a uniform level throughout the year, aiding in bringing about a closer seasonal adjustment of production to market needs. Normally, production varies substantially from month to month depending upon seasonal changes and production conditions, the normal period of high production being the months of April, May and June when pasturage is usually abundant. High production during these months is normally followed by correspondingly low production during September, October and November. Consumption also varies throughout the year but without appreciable relation to the variation in milk production. The base-surplus plan provides an incentive to producers to keep their production at a uniform level throughout the year and compensates for making the necessary adjustment, to the end that the market may be assured at all times of an adequate supply of milk suitable for fluid consumption. The established base assigned to each producer is related to the quantity of milk produced by him during the normally low production months.

At the same time, by assigning to each producer a definite production quota representing the amount of milk for which he will be paid at the higher blended price, an equitable relation among producers is maintained. Each producer is given his fair share of the fluid market, represented by his established base, while the surplus production of each producer over and above his base is paid for at the surplus price. If the producer allows his average production to fall substantially below his base, his base will be adjusted downward.

Experience shows that this plan tends to accomplish the desired end. The fluctuation in production from month to month becomes less and less pronounced.

The classified price plan and the base-surplus plan have been in operation in the Chicago market for several years. They have also been in successful operation for a number of years in the following markets: St. Louis, Philadelphia, Baltimore, Washington, Milwaukee, and Detroit. The plan provided for in the License for the stabilization of the fluid milk market, the assurance to producers of a fair price for milk, and the securing of a uniform price to all producers by requiring all producers to bear their fair share of the surplus burden is thus not new or untried. The essential features of this plan have been incorporated in voluntary agreements entered into by associations of producers in many of the principal metropolitan areas during the past ten years. Such voluntary methods have not always proved successful, for the reason that producers and distributors who did not voluntarily agree to the plan and were free to operate on an unrestricted basis undermined the position in the market of producers and distributors who were bound by the plan. It is of the essence of any plan for stabilization of the market in any milk shed that all producers and distributors supplying or distributing milk in such milk shed participate therein and be bound thereby.

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30. It is further stipulated and agreed that whatever relief shall be granted in this case shall be embodied in a final decree permanently enjoining the enforcement of the License, in whole or in part, or permanently enjoining the plaintiff Association and the Intervener from violating said License, in whole or in part, as the case may be.

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Solicitors for Plaintiffs.

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Solicitors for Meadowmoor Dairy, Inc.

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Solicitors for Defendants.